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JOINT APPENDIX

IN THE

Supreme Court of the United States

October Term, 1982

Nos. 82-977 and 82-898

MINNESOTA STATE BOARD FOR COMMUNITY COLLEGES,

Appellant,

and

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, MINNESOTA EDUCATION ASSOCIATION, and NATIONAL EDUCATION ASSOCIATION, et al.,

Appellants,

v.

LEON W. KNIGHT, et al.,

Appellees,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

JURISDICTIONAL STATEMENTS FILED NOVEMBER 30, 1982 AND DECEMBER 10, 1982
REVIEW GRANTED MARCH 28, 1983

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JOINT APPENDIX

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October Term, 1982

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MINNESOTA STATE BOARD FOR COMMUNITY COLLEGES,

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MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, MINNESOTA EDUCATION ASSOCIATION, and NATIONAL EDUCATION ASSOCIATION, et al.,

Appellants,

v.

LEON W. KNIGHT, et al.,

Appellees,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Civil Action No. 4-74-659

LEON W. KNIGHT, MORGAN KJER, DONALD A. DAHLIN, JAMES D. WALLACE, TERRENCE D. FLORIN, WILLIAM B. BAUMAN, HAROLD J. GARDNER, THOMAS J. PATIN, EUGENE D. MIELKE, DR. RICHARD A. THOMPSON, DAVID R. GROUT, JOAN M. FARKAS, GARY LEE NELSON, RONALD LIEVENSE, LUCILLE JOHNSON, VIRGINIA E. LANEGRAN, MAX A. MALMQUIST, RALPH G. POWELL, RICHARD D. ISENHART, CRESSTON GACKEL,

Plaintiffs,

vs.

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION; MINNESOTA EDUCATION ASSOCIATION; INDEPENDENT MINNESOTA POLITICAL ACTION COMMITTEE FOR EDUCATION; NATIONAL EDUCATION ASSOCIATION; JAMES A. NORMAN, individually and in his former official capacity as President, Minnesota Community College Faculty Association; JAMES K. DURHAM, individually and in his official capacity as Vice President, Minnesota Community College Faculty Association; ROBERT BELL, individually and in his official capacity as Secretary, Minnesota Community College Faculty Association; CALVIN MINKE, individually and in his official capacity as Treasurer, Minnesota Community College Faculty Association; RALPH S. CHESEBROUGH, individually and in his official capacity as Executive Secretary, Minnesota Community College Facul-

ty Association; DONALD HOLMAN, individually and in his official capacity as Minnesota Education Association Representative, Minnesota Community College Faculty Association; WILLIAM M. MONDALE, individually and in his former official capacity as President, Minnesota Education Association; JAMES ROSASCO, individually and in his former official capacity as President, 1973-74, Minnesota Education Association; ALFRED F. PROVO, individually and in his former official capacity as Treasurer, Minnesota Education Association; ALBERT L. GALLOP, individually and in his official capacity as Executive Director, Minnesota Education Association; FULTON B. KLINKERFUES, individually and in his former official capacity as President, Independent Minnesota Political Action Committee for Education; JANET R. MORGAN, individually and in her former official capacity as Vice President, Independent Minnesota Political Action Committee for Education; JOHN W. SCHUTT, individually and in his official capacity as Treasurer, Independent Minnesota Political Action Committee for Education; JAMES A. HARRIS, individually and in his former official capacity as President, National Education Association; HELEN D. WISE, individually and in her former official capacity as President, 1973-74, National Education Association; CATHERINE O'C. BARRETT, individually and in her former official capacity as President, 1972-73, National Education Association; TERRY E. HERNDON, individually and in his official capacity as Executive Secretary, National Education Association; SAM E. LAMBERT, individually and in his former official capacity as Executive Secretary, 1972-73, National Education Association; RAYMOND CRIPPEN, ROSEMARY McVAY, JOHN SONTOROVICH, HUGH V. PLUNKETT III, ARLEENE NYCKLEMOE, DOUGLAS

ALAN BRUCE, RONALD H. DENISON, EDWARD G. ZIEGLER, VAL BJORNSON, CHARLES SWANSON, individually; PHILLIP C. HELLAND, individually and in his official capacity as Chancellor of the Minnesota Community Colleges; JOHN F. HELLING, individually and in his official capacity as President, North Hennepin Community College; DALE A. LORENZ, individually and in his official capacity as President, Normandale Community College; NEIL CHRISTENSON, in his official capacity as President, Anoka-Ramsey Community College; WAYNE S. BURGGRAAFF, in his official capacity as Minnesota Commissioner of Finance; JAMES LORD, in his official capacity as Minnesota State Treasurer; PETER OBERMEYER, in his official capacity as Director of the Minnesota State Bureau of Mediation Services; WILLARD H. McGUIRE, in his official capacity as President, National Education Association; ROGER JOHNSON, in his official capacity as Chairman, Independent Minnesota Political Action Committee for Education; DONALD C. HILL, in his official capacity as President, Minnesota Education Association; TOYSE KYLE, ELMA PONTO, JOSEPH NORQUIST, NADINE CHASE, PAUL BRINKMAN, in their official capacities as members of the Minnesota State Board of Community Colleges,

Defendants.

Date Docket No. Proceedings

1-30-75—6—Filed amended complaint and request for a three-judge district court with aff. of service by mail on 1-30-75.

2-12-75—7—Filed separate answer of Crippen, McVay, Sontorovich, Plunkett, Nycklemoe, Bruce, Helland, Helling, Lorenz and Denison with aff. of service by mail on 2-10-75.

2-12-75—8—Filed separate answer of Ziegler and Bjornson with aff. of service by mail on 2-10-75.

2-12-75—9—Filed separate answer of Swanson with aff. of service by mail on 2-10-75.

2-13-75—10—Filed notice of motion returnable 2-28-75 at 9:00 AM and motion of pltfs' to convene a statutory three-judge court with aff. of service by mail on 2-13-75.

12-23-75—22—Filed Memorandum and Order (Alsop, J) dated 12-22-75 as follows: IT IS ORDERED that plaintiffs' motion to convene a three-judge court be, and the same hereby is denied.

IT IS FURTHER ORDERED that defendants' motion to stay or dismiss be, and the same hereby is denied.

2-11-76—24—ANSWER OF MCCFA, MEA, IMPOAFE (sic), NEA, NORMAN, DURHAM, BELL, MINKE, Chesebrough, Holman, Mondale, Rosasco, Provo, Gallop, Klinkerfues, Morgan, Schutt, Harris, Wise, Barrett, Herndon and Lambert.

5-20-76—30—OPINION from the Eighth Circuit Court of Appeals granting petition for writ of mandamus to compel the convention of a three-judge court.

5-26-76—32—ORDER (Floyd R. Gibson, Chief Judge, U. S. Court of Appeals for the 8th Circuit) hereby designates the Honorable Gerald W. Heaney, United States Circuit Judge, and the Honorable Earl R. Larson, United States District Judge for the District of Minnesota to serve with the Honorable Donald A. Alsop, United States District Judge for the District of Minnesota to hear and determine the action.

10-17-78—IV-2—ORDER (Alsop, J) dated 10-16-78 as follows:

IT IS ORDERED that all discovery in this action be closed as of December 31, 1978, save and except plaintiffs' responses to defendants' contention interrogatories, which responses shall be served and filed on or before January 15, 1979.

IT IS FURTHER ORDERED that on or before January 30, 1979, the parties prepare, execute and file with the court a stipulation of undisputed facts.

IT IS FINALLY ORDERED that a further pretrial conference be had in the above action on February 2, 1979 at 9:30 o'clock a.m.

1-12-79—V-15—NOTICE OF PLTFS' MOTION TO RESCIND ORDER OF 10-13-78 AND GRANTING OTHER RELIEF RET. 2-2-79 at 9:30 A.M.

2-1-79—V-33—NOTICE AND MOTION OF PLTFS. TO RESCIND COURT'S ORDER OF 10-13-78 AND FOR AN ORDER COMMANDING PRODUCTION OF CERTAIN FILES MAINTAINED BY, THE DEPOSITIONS OF CERTAIN STAFF-PERSONNEL OF, AND THE PAYMENT OF CERTAIN COSTS AND FEES, RET. 1-26-78 at 2:00 P.M.

4-9-79—V-54—ORDER (Heaney, Larson, Alsop, J) dated 4-4-79 as follows:

IT IS ORDERED that the motion of plaintiffs as hereinabove set forth be and the same hereby is in all things denied.

IT IS FURTHER ORDERED that the motion of the defendants National Education Association, Minnesota Education Association and their officers and staff as hereinbefore set forth be and the same hereby is in all things denied.

IT IS FURTHER ORDERED that on or before May 7, 1979 each of the parties meet, prepare, and enter into a stipulation of undisputed facts. On or before May 21, 1979 counsel for each party shall prepare, file and serve upon opposing counsel a statement setting forth all facts in issue which remain unresolved and which it proposes to submit to the court for determination. On or before June 4, 1979 counsel for each party shall prepare, serve and file a schedule of all exhibits which will be offered in evidence at the trial as part of its case in chief. On or before June 4, 1979 counsel for each party shall make for identification in the sequence proposed to be offered all exhibits intended to be offered at trial. On or before June 4, 1979 counsel for each party shall prepare, serve and file a schedule of depositions or portions thereof it proposes to offer in evidence. On or before June 4, 1979 counsel for each party shall prepare, serve and file a schedule of interrogatories and answers to interrogatories that it proposes to offer in evidence. On or before June 4, 1979 counsel for each party shall prepare, serve and file a full and complete statement of the facts it proposes to prove as part of its case in chief. On or before June 18, 1979 each party shall file a detailed written brief setting forth certain things.

IT IS FINALLY ORDERED that a further hearing herein be conducted by the court on the 29th day of June, 1979 at 9:30 a.m. at the Federal Courts Building in St. Paul.

4-23-79—V-58—NOTICE AND MOTION OF PLTFS. FOR DISSOLUTION OR STAY OF COURT'S ORDER OF 4-4-79 and for reconsideration and hearing on pltfs' motion to rescind court's order of 10-13-78.

5-7-79—VI-8—NOTICE AND MOTION OF PLTFS. FOR DISSOLUTION OR STAY OR COURT'S ORDER OF 4-47-9 and for reconsideration and hearing on Pltfs' motion to rescind Court's Order of 10-13-78 and to reschedule dates for compliance with Court's Order of 4-4-79, with aff. of Edwin Vieira, Jr.

6-21-79—VI-31—ORDER (Alsop, J) that the plaintiffs' various motions to set down for hearing, to reconsider and to rescind the court's order of October 13, 1978 be and the same hereby are in all things denied. IT IS FURTHER ORDERED That the plaintiffs' motion to stay the court's order of April 4, 1979 as now amended by the court's order of June 15, 1979 be and the same hereby is in all things denied. (Dated 6-20-79)

7-18-79—VI-49—MOTION OF PLTFS. FOR LEAVE TO FILE PETITION FOR EXTRAORDINARY WRIT AND PETITION FOR EXTRAORDINARY WRIT, WITH PETITIONERS' APPENDICES. (Separate).

11-19-79—VII-1—MINUTES OF PRETRIAL CONFERENCE (Heaney, Larson & Alsop, J) (Lindberg, R). Ordered that the members of the three judge panel will name a Master within a reasonable period of time to supervise compliance of the court's order of 6-15-79 and take whatever testimony is necessary regarding disputed issues of fact. Order to be issued. The fees and expenses shall be borne by the parties, and the court will decide how the expenses will be distributed. Stipulation of undisputed facts shall be filed by 12-7-79. Master will make no recommendations to the court but will make rulings regarding admissibility & relevancy. Parties may serve and file motions as in the past.

12-14-79—VII-13—ORDER (Heaney, Larson & Alsop, J) THAT: The Honorable Ronald E. Hachey is hereby appointed Special Master, pursuant to Rule 53 of the Fed. R. Civ. P.

IT IS FURTHER ORDERED that the Special Master shall:

1) Conduct conferences, issue orders, and do all other things necessary to supervise compliance with the Order of this court of December 13, 1979, permitting such changes in the deadlines set by that Order as may be necessary in the interests of justice.

2) Take testimony on disputed facts in the above-entitled action and organize them in an understandable fashion, but not make recommendations to the court as to an appropriate decision on the merits.

3) Report to the court on the progress of the parties' compliance with the Order of this court of December 13, 1979, and upon the timing and procedure adopted for the taking of testimony.

IT IS FINALLY ORDERED that the fees of this Special Master shall be paid by the parties in such sums and in such proportions as the court shall determine at a later date. The extent of each party's cooperation with the Special Master will be a factor in this determination. (Dated 12-13-79)

2-1-80—VII-20—PLTF'S MOTION FOR LEAVE OF COURT TO FILE A SECOND AMENDED COMPLAINT AND MEMORANDUM IN SUPPORT.

2-4-80—VII-22—CERTIFIED COPY OF JUDGMENT FROM THE EIGHTH CIRCUIT COURT OF APPEALS that the petition for writ of mandamus be and is hereby denied in accordance with this Court's opinion.

4-25-80—VII-30—ORDER (Heaney, Larson & Alsop-J) THAT: Plaintiff's motion for leave of Court to file a Second Amended Complaint is in all things denied.

IT IS FURTHER ORDERED That:

(1) Toyse Kyle, Elna Ponto, Joseph Norquist, Nadine Chase, Paul Brinkman, Neal Christenson, Wayne S. Burggraaff, James Lord and Peter Obermeyer be added as defendants herein in their official capacities without service of process.

(2) Willard H. McGuire, Donald C. Hill and Roger Johnson be added as defendants herein in their official capacities and a copy of the Amended Complaint be served upon them in person or by certified mail at their last known addresses.

(3) Raymond Crippen, John Santorovich, Hugh V. Plunkett, III, Rosemary McVay, Ronald H. Denison, Edward G. Ziegler, Val Bjornson and Charles Swanson remain as parties to this action other than in their official capacities.

5-5-80—VII-34—PLTF'S MOTION TO RESCIND THE COURT'S ORDER OF 24 APRIL 1980 AND TO REHEAR PLTF'S MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT.

5-21-80—VII-38—ORDER (Heaney, Larson, Alsop, J) It is Ordered that plaintiff's Motion to Rescind the Court's Order of 24 April 1980 and to Re-hear plaintiff's Motion for Leave to File a Second Amended Complaint be and the same hereby is in all things denied. (Dated 5-15-80).

5-30-80—VII-45—STIPULATION DISMISSING THE SECOND CLAIM FOR RELIEF FROM PLAINTIFFS' AMENDED COMPLAINT.

6-9-80—VII-46—AMENDED COMPLAINT (JURY TRIAL DEMANDED) AND REQUEST FOR A THREE-JUDGE DISTRICT COURT.

6-27-80—VII-47—MINUTES OF PROCEEDINGS (Heaney, J) (Undeland, R) Hearing on Pretrial Stipulations and Instructions: Mr. Leonard Lindquist, present at hearing, had been selected, previous to hearing, to act as Special Master, replacing Judge Ronald E. Hachey. Discussions pursuant as to discovery time schedules to be met, re: Expert witness and exhibits. All other discovery is closed. Court indicated Special Master should have his work completed in approximately 90 days, (10-1-80). Counsel and Special Master Mr. Lindquist set the tentative date of August 4th at 10:00 a.m. in the U.S. Courthouse, St. Paul, MN to commence the Evidentiary hearings. Counsel and Special Master further discussed fees and expenses. Court ordered copies of transcript of this hearing be mailed to himself, the Special Master and the Counsel that are present.

3-23-81—IX-66—REPORT OF LEONARD E. LINDQUIST, SPECIAL MASTER. Copy of Report sent to: Dr. Edwin Vieira, Jr., John J. Fogarty, Darel F. Swenson, Messrs. Eric R. Miller, Keith E. Goodwin, Mark D. Anderson, and Donald W. Selzer, Jr., Esqs., Donald J. Mueting, Esq., Special Asst. Atty. General, and Barbara Lindsey Sims, Special Assistant Atty. General.

11-17-81—X-2—FINDINGS OF FACT AND ORDER (Heaney-Alsop-Larson, J) dated 11-16-81 that IT IS HEREBY ORDERED THAT:

1. Each party to this proceeding shall submit proposed conclusions of law based upon the facts as found herein on or before December 9, 1981.

2. Each party may submit a memorandum of points and authorities in support of their position, together with their proposed conclusions. Such memorandum shall not exceed twenty-five (25) pages in length.

3. Final oral argument will be December 16, 1981 at 2:30 o'clock p.m.

3-31-82—X-11—MEMORANDUM OPINION AND ORDER (Heaney-J., Larson-J., and Alsop-J.) (dated 3-30-82).

4-8-82—X-16—PLTFS MOTION FOR RELIEF FROM JUDGMENT AND FOR A NEW TRIAL.

4-12-82—X-18—DEFTS' MOTION re: costs, together with Affidavit of Eric R. Miller.

8-13-82—X-22—ORDER (Heaney, Alsop & Larson, J) that Plaintiffs motion to amend findings, for relief from judgment, for a new trial and a hearing on the calculation of attorneys' fees and defendants' motion to amend Court's judgment insofar as it taxes 20 percent of plaintiffs' costs against the MCCFA and MSBCC are all denied. (Dated 8-12-82).

10-1-82—X-24—PLTF'S NOTICE OF APPEAL TO THE U. S. SUPREME COURT FROM THE JUDGMENT ENTERED ON 3-31-82 AND THE FINDINGS OF FACT ENTERED ON 11-16-81.

Mailed certified copy of Notice, along with two certified copies of the docket entries to Alexander Stevas, Clerk, U. S. Supreme Court, 1 First Street N. E., Washington, D. C. 20543. Mailed copy of Notice to Counsel.

10-5-82—X-25—DEFT., MINNESOTA STATE BOARD FOR COMMUNITY COLLEGES, NOTICE OF APPEAL TO THE U. S. SUPREME COURT FROM ORDER FOR JUDGMENT, PARAGRAPHS 1, 2 and 3, ENTERED ON 3-31-82.

10-12-82—X-26—MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, THE MINNESOTA EDUCATION ASSOCIATION AND THE NATIONAL EDUCATIONAL ASSOCIATION'S NOTICE OF APPEAL FROM ORDER OF 3-31-82 AND 8-13-82.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
(TITLE OMITTED IN PRINTING)

PLAINTIFFS' AMENDED COMPLAINT

[6] Plaintiffs are residents of Minnesota and citizens of the United States. Specifically, Plaintiffs

(D) do not desire to be represented either individually or collectively by defendants Association, MEA, IMPACE, OR NEA with respect to

(1) collective bargaining with the Board;

(2) the expression, communications, or exchange of views, complaints, opinions, or concerns to or with the Board or its agents in respect of any matters

(a) concerning personnel, student affairs, curricula, facilities, or finances in or of the community colleges subject to the jurisdiction of the Board [hereinafter referred to collectively as "college policy"]; or

(b) otherwise relating to the services provided to the public by the Board;

(3) the support of political campaigns of candidates for public office, in the State of Minnesota or elsewhere;

(4) propaganda, agitation, or lobbying on a local, state or nationwide basis [hereinafter referred to collectively as "union activism"] intended to or which in its operation and effect may

(a) influence the general public to vote; legislative bodies to enact laws; or executive or administrative officials to exercise their authority to the legal, economic, or other special advantage of any individual or group; or

(b) otherwise advance any philosophical, scientific, political, economic, or social doctrine, concept, policy, or program [hereinafter referred to collectively as "ideological causes"];

(5) The provision of medical, legal, insurance credit, recreational, educational, economic, social, or other services or activities [hereinafter referred to collectively as socio-economic services"]; or

(6) any other activity.

[19] As Plaintiffs' statutorily imposed exclusive representative, the Association, by and through defendants Norman, Durham, Bell, Minke, Chesebrough and Holman [hereinafter referred to collectively as "Local Officers"], has claimed and exercised the purported statutory rights, powers, and privileges [hereinafter referred to collectively as "authority"], binding upon Plaintiffs,

(A) under color of MINNESOTA STATUTES §§179.63 [15-18], 179.65[2, 4, 7], 179.69[1-2, 4], 179.70[1, 6], 179.72 [12], and 179.74[4], to meet and negotiate and meet and confer with the Board and defendants Members, Chancellor, and Presidents [hereinafter referred to collectively as "College Officials"] regarding terms, conditions, grievances, and arbitrable disputes arising out of Plaintiffs' employment [hereinafter referred to collectively as "employment matters"];

(D) under color of MINNESOTA STATUTES Chapter 179, to discuss, express, communicate, and exchange grievances, complaints, opinions, views and concerns [hereinafter referred to collectively as "employee opinion"] to or with the Board and defendant College Officials, and their agents, on behalf of Plaintiffs in respect of

(1) college policy; and

(2) other matters relating to the services provided to the public by the Board.

[20] As a result of the certification of the Association as Plaintiffs' exclusive representative, the Board and defendant College Officials, and their agents, have undertaken to satisfy by their official action the purported statutory duties of the Board and said Defendants

(A) under color of MINNESOTA STATUTES §§179.63 [15-18], 179.66[2], 179.68[1, 2(5, 11)], 179.69[1-2], and 179.74[4], to meet and negotiate and meet and confer with the Association regarding employment and other matters binding upon Plaintiffs;

(B) under color of MINNESOTA STATUTES §§179.66 [7] and 179.68[2(1, 5-6, 9)], neither to meet and negotiate nor meet and confer with Plaintiffs either individually or in groups separate from the Association;

(C) under color of MINNESOTA STATUTES §§179.68 [1, 2(6, 9)], 179.69[1, 3-6], 179.70[1-4], 179.72[6-7, 12], and 179.74[4-5], to negotiate, execute, and implement purported contracts with the Association regarding employment and other matters binding upon Plaintiffs;

(E) under color of MINNESOTA STATUTES Chapter 179 generally, to manage the affairs of the community colleges within its jurisdiction subject to such control or influence as the Association may exercise under color of the purported statutory authority enumerated in ¶19.

The Board and defendant College Officials, and their agents, will continue to undertake to satisfy by their official action these and other purported statutory duties of the Board and said Defendants arising under color of MINNESOTA STATUTES Chapter 179.

[21] On April 17, 1973, under color of MINNESOTA STATUTES, §§179.69, 179.70, and 179.74, the Association and the Board, by and through defendants Chancellor, Durham and Chesebrough inter alia, executed a document (the purported contract) which recites employment and other matters between Plaintiffs and the Board, and specifically provides that the Board

(A) shall recognize the Association as Plaintiffs' exclusive representative (Article I);

(B) shall neither meet and negotiate nor meet and confer on employment matters with any employee or group of employees except through the Association as exclusive representative (Article I);

(C) shall require defendant Presidents or their designees to meet with an Association committee to exchange views on matters of college policy in their respective colleges (Article VI, §5);

(D) shall meet and confer with an Association committee on educational matters of statewide significance (Article VI, §6);

(F) shall be bound by the provisions of the purported contract through June 30, 1975, and from year to year thereafter (Article XXVII).

[34] **As a result of the acts and conduct of the Board and of defendants Association, Local Officers, College Officials, Ziegler, Bjornson, and Director done under color of the statutory scheme of exclusive representation set out in ¶17 and described in ¶¶19-20, Plaintiffs have been and will be required, as a condition of continued public employment, to suffer**

(A) denial of any effective means, either as individuals or as groups separate from the Association, to meet and

negotiate or meet and confer with or otherwise petition the Board or defendant College Officials with respect to employee opinion on college policy, employment matters, and other issues;

(B) relegation of employment and other matters to the exclusive jurisdiction and control of the Association, a private organization.

(1) delegated quasi-governmental authority undefined by reference to any objective or rational standards; and

(2) subject neither to supervision nor to review by competent legislative, executive, administrative, or judicial officers or tribunals;

(C) compulsory wage check-offs levied as described in ¶38 in financial support of the purported services of the Association in collective bargaining with the Board and defendant College Officials;

(D) control of employment and other matters by collective bargaining between the Association and the Board and defendant College Officials;

(E) compelled association with the ideological causes, practices, and activities of defendants Associations, MEA, IMPACE, NEA, and Officers.

(1) by relegation of employment and other matters to the exclusive jurisdiction and control of the Association; and

(2) by check-off and expenditure of "fair-share" fees;

(F) as a consequence of their choice not to retain formal membership in the Association, an invidiously discriminatory denial, by defendants Association and Local Officers, of any effective means procedurally or substantively to formulate, pass upon, or administer the particular union policies embodied in or implemented through collective bargaining with the Board;

(G) defendants Association and Local Officers as their spokesmen with respect to matters concerning

(1) college policy;

(2) public education in community colleges in the State of Minnesota; and

(3) other issues;

(H) the coercive and intimidatory demands of the Association that Plaintiffs

(1) acknowledge defendants Association, MEA, IMPACE, NEA, and Officers as the source and cause of those benefits which accrue to Plaintiffs from public employment with the Board;

(2) support the activities of defendants Association, MEA, IMPACE, NEA, and Officers directed towards their control of the qualifications for entrance into and the privilege of remaining in the profession of teaching, in the State of Minnesota and elsewhere;

(3) conform their attitudes, convictions, and beliefs on ideological causes and professional issues to the policies and goals advanced by defendants Association, MEA, IMPACE, NEA, and Officers; and

(4) otherwise give loyalty, allegiance, and support to defendants Association, MEA, IMPACE, NEA, and Officers, in derogation of

(a) their duties as public employees to the Board, the educational community, and the public generally;

(b) their responsibilities as citizens of the State of Minnesota; and

(c) their own self-interest as they perceive it; and

(I) the necessary deleterious results and concomitants of the requirements enumerated in ¶34(A-H) as enforced by Defendants against all "fair share" payers under color of MINNESOTA STATUTES Chapter 179.

[35] These and other requirements enforced and to be enforced under color of the challenged statutory provisions, together with the plain terms of those provisions and the political nature of compulsory collective bargaining in public employment, demonstrate that said system of exclusive representation

(A) on its face, in its essential inevitable effect, and in the deliberate and calculated purpose of the Minnesota Legislature; and

(B) as applied intentionally and purposefully against Plaintiffs

(1) by the Board and by defendants Association, Local Officers, College Officials, Ziegler, Bjornson, and Director acting pursuant to the statutory mandate of that Legislature; and

(2) by defendants Association, MEA, IMPACE and NEA acting together in concern, by and through defendant Officers;

(a) with knowledge and under color of

(i) the challenged statutory provisions described in ¶17; and

(ii) the purported contract described in ¶21; and

(b) pursuant to the agreements and arrangements among them described in ¶22.

does and will constitute and cause, and has caused, abridgements, disparagements, denials, and deprivations of rights, powers, privileges, and immunities [hereinafter referred to collectively as "freedoms"] and secured for Plaintiffs by the First, Ninth, Tenth, Thirteenth, and Fourteenth Amendments to the United States Constitution, and by Title 42, UNITED STATES CODE §1983.

[36] Specifically, because said system of exclusive representation

(A) is intended, necessarily operates, and has been and will be applied by defendants Association, MEA, IMPACE, NEA, Officers, College Officials, Ziegler, Bjornson and Director to coerce, restrain, chill, and discourage Plaintiffs in the exercise and enjoyment of their constitutionally guaranteed freedoms;

(B) authorizes public officials and private parties to exercise excessively broad, vague, and unreviewable administrative and quasi-governmental authority, and has been and will be so applied by defendants Association, Local Officers, College Officials, and Director;

(C) is not necessary for the attainment of any compelling public interest; and

(D) bears no substantial rational relationship to any legitimate State aim; said system of exclusive representation:

First, abridges and deprives Plaintiffs of their fundamental freedom of self-government, in violation of the First, Ninth, Tenth, and Fourteenth Amendments;

Second, abridges and deprives Plaintiffs of their fundamental freedoms of speech, thought, conscience, assembly, petition, and association, in violation of the First and Fourteenth Amendments;

Third, denies, disparages, and deprives Plaintiffs of their fundamental freedoms of contract and employment, in violation of the Ninth, Tenth, Thirteenth and Fourteenth Amendments;

Fourth, constitutes involuntary servitude imposed other than as a punishment for crime, in violation of the Thirteenth Amendment;

Fifth, deprives Plaintiffs of liberty and property without procedural or substantive due process of law, in violation of the Fourteenth Amendment; and

Sixth, denies Plaintiffs the equal protection of the laws, in violation of the Fourteenth Amendment.

In applying said system of exclusive representation against Plaintiffs, defendants Association, MEA, IMPACE, NEA, Officers, College Officials, Ziegler, Bjornson, and Director have violated and will violate Title 42, UNITED STATES CODE §1983.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

CIVIL ACTION NO. 4-74-659

LEON W. KNIGHT, et al.,

Plaintiffs,

vs.

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, et al.,

Defendants.

SEPARATE ANSWER OF DEFENDANTS CRIPPEN, MCVAY SONTOROVICH, PLUNKETT, NYCKLEMOE, BRUCE, HELLAND, HELLING, LORENZ AND DENISON

Defendants Crippen, McVay, Sontorovich, Plunkett, Nycklemoe, Bruce, Helland, Helling, Lorenz and Denison, for their separate answer to the amended complaint herein, admit, deny and allege as follows:

1. Specifically deny that this action is properly brought pursuant to the statutes set forth in paragraphs 1, 2, 3 and 4 of plaintiffs' amended complaint.

2. Deny that this is a proper action for a three-judge court pursuant to Title 28 U.S.C. §§ 2281 and 2294, as alleged in paragraph 5 of plaintiffs' amended complaint.

3. Deny that plaintiffs Florin and Patin are presently faculty members at Normandale Community College; admit that all other plaintiffs are faculty members at North Hennepin, Normandale and Anoka-Ramsey Community Colleges; admit that the Minnesota Community College Faculty Association (hereinafter "Association") is the certified exclusive representative of faculty members employed by the Minnesota State Board for Community Colleges (hereinafter "Board"); allege that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 6 of plaintiffs' amended complaint.

4. Allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 7, 8, 9, 10, 19, 22, 23, 24, 25, 26, 28, 29, 30, 31, 34, 35, 36, 38, 39, 40, 42, 43, 44, 49, 50, 51 and 52 of plaintiffs' amended complaint.

5. Admit that defendant Association is an "employee organization" which has been certified as the exclusive representative of faculty members employed by the Board; admit that a contract reciting terms and conditions of employment between the Board and defendant Association was executed on April 17, 1973; allege that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 11 of plaintiffs' amended complaint.

6. Deny that defendants Crippen, McVay, Sontorovich, Plunkett, Nycklemoe and Bruce are responsible for alleged acts and conduct of the Board; admit the remaining allega-

tions contained in paragraph 12 of plaintiffs' amended complaint.

7. Deny that defendant Board Members are responsible for alleged acts of the Board; deny that the Board is directly responsible for the check-off of any fair share fees; admit all other allegations contained in paragraph 13 of plaintiffs' amended complaint.

8. Allege that Ronald H. Denison is on leave of absence from the presidency of Anoka-Ramsey Community College; deny that the "presidents" meet and confer with the Association on a statewide basis or meet and negotiate with the defendant Association; allege that the Presidents are agents of the Board for only limited purposes; admit the remainng allegations contained in paragraph 14 of plaintiffs' amended complaint.

9. Admit that defendant Ziegler is the Commissioner of Finance for the State of Minnesota and that defendant Bjornson was the Treasurer of the State of Minnesota; allege that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 15 of plaintiffs' amended complaint.

10. Admit that defendant Swanson is the Director of the Minnesota Bureau of Mediation Services; admit that he has responsibility for the operation of the Bureau of Mediation Services; admit that he is the successor in office to Vern E. Buck; admit that the Minnesota Community College Faculty Association has been certified as the exclusive representative of faculty members employed by the Minnesota State Board for Community Colleges; admit that the Director's duties are generally set forth in Minn. Stat. §§ 179.61-179.76 (1974); allege that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allega-

tions contained in paragraph 16 of plaintiffs' amended complaint.

11. To the extent that paragraphs 17 and 18 of plaintiffs' amended complaint attempt to recite the contents of the Minnesota Public Employment Labor Relations Act, these separate answering defendants refer this Court to the official text thereof.

12. Deny that the Board and College Officials have checked off any fair share fees; admit that the Board has undertaken to satisfy its official duties under Minn. Stat. ch. 179 (1974); allege that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 20 of plaintiff's amended complaint.

13. Deny that the Board contracted not to meet with any other employee or group of employers; allege that the Board agreed not to meet and negotiate or meet and confer relative to terms and conditions of employment with any employee or group of employees covered by the contract except through defendant Association; admit all other allegations contained in paragraph 21 of plaintiffs' amended complaint.

14. Admit that during academic year 1973-1974 defendant Association required the check-off of fair share fees totaling $94.48 per faculty member; allege that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 27 of plaintiffs' amended complaint.

15. Admit that the Board has not provided plaintiffs with an accounting of defendant Association's uses of fair share fees; allege that defendant Association has not provided the Board with an accounting of its uses of fair share fees; allege that they are without knowledge or information sufficient to

form a belief as to the truth of the remaining allegations contained in paragraph 32 of plaintiffs' amended complaint.

16. Deny that Board Members knew, should have known, presently know or should know the substance, purpose or result of acts and conduct of other defendants specified in paragraph 45 of plaintiffs' amended complaint; allege they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 45 of plaintiff's amended complaint.

17. Deny that the Board, Board Members, Chancellor or Presidents checked-off or check-off any fair share fees from plaintiffs' wages or had the knowledge described in paragraph 46 of plaintiffs' amended complaint; allege that they are without knowledge or information sufficient to form a belief as to the truth of all other allegations contained in paragraph 46 of plaintiffs' amended complaint.

18. Deny the allegations contained in paragraphs 47 and 48 of plaintiffs' amended complaint.

19. Except as expressly admitted, denied or otherwise qualified hereinabove, deny each and every allegation, matter, fact and thing contained in plaintiffs' amended complaint.

SEPARATE DEFENSES

20. Allege that this Court lacks jurisdiction over the subject matter.

21. Allege that if this Court determines that it has jurisdiction, it should abstain from hearing this matter.

22. Allege that the amended complaint fails to state a claim against these answering defendants upon which relief may be granted.

23. Allege that these answering defendants are not proper parties.

24. Allege that Minn. Stat. ch. 179 (1974) or any part thereof is not violative of the United States Constitution either on its face or as applied by defendant College Officials, Board or Board Members.

WHEREFORE, these answering defendants request that plaintiffs' amended complaint be dismissed and that these defendants be granted their costs and disbursements.

Dated: February 10, 1975.

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RICHARD G. MARK
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Denison

UNTED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Civ. Action No. 4-74-659

LEON W. KNIGHT, et al.,

Plaintiffs,

vs.

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, et al.,

Defendants.

ANSWER OF DEFENDANTS MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, MINNESOTA EDUCATION ASSOCIATION, INDEPENDENT MINNESOTA POLITICAL ACTION COMMITTEE FOR EDUCATION, NATIONAL EDUCATION ASSOCIATION, JAMES A. NORMAN, JAMES K. DURHAM, ROBERT BELL, CALVIN MINKE, RALPH S. CHESEBROUGH, DONALD HOLMAN, WILLIAM M. MONDALE, JAMES ROSASCO, ALFRED F. PROVO, ALBERT L. GALLOP, FULTON B. KLINKERFUES, JANET R. MORGAN, JOHN W. SCHUTT, JAMES A. HARRIS, HELEN D. WISE, CATHARINE O'C. BARRETT, TERRY E. HERNDON, AND SAM M. LAMBERT

Defendants, Minnesota Community College Faculty Association, Minnesota Education Association, Independent Minnesota Political Action Committee for Education, National Education Association, James A. Norman, James K. Durham, Robert Bell, Calvin Minke, Ralph S. Chesebrough, Donald Holman, William M. Mondale, James Rosasco, Alfred F. Provo,

Albert L. Gallop, Fulton B. Klinkerfues, Janet R. Morgan, John W. Schutt, James A. Harris, Helen D. Wise, Catharine O'C. Barrett, Terry E. Herndon, and Sam M. Lambert, for their separate answer to the amended complaint herein, admit, deny and allege as follows:

FIRST DEFENSE

1. Deny that this action is properly brought pursuant to the statutes relied upon in Paragraphs 1, 2, 3 and 4 of the amended Complaint.

2. Deny that this is a proper action for a three-judge court pursuant to Title 28 U.S.C. §2281 and §2294 as alleged in Paragraph 5 of the amended complaint.

3. Admit that the Minnesota Community College Faculty Association ("MCCFA") is the certified exclusive representative of faculty members employed by the Minnesota State Board for Community Colleges ("Board") but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 6 of the amended complaint.

4. Admit that the individuals listed in Paragraph 7 of the amended complaint were or are officers or representatives of defendants, MCCFA, National Education Association ("NEA"), Minnesota Education Association ("MEA") and Independent Minnesota Political Action Committee for Education ("IMPACE").

5. Admit that the NEA is an unincorporated association with its principal office located at 1201 16th Street, N.W., Washington, D.C., and a local office at 41 Sherburne Avenue, St. Paul, Minnesota; admit that the NEA is not an exclusive representative under Minnesota Statutes §179.67 and that some of the fair share fees deducted under Minnesota Statutes §179.65 Subd. 2 are furnished to the NEA, but deny the remaining allegations of Paragraph 8 of the amended complaint.

6. Admit that the MEA is a non-profit corporation under the laws of the State of Minnesota with its principal office located at 41 Sherburne Avenue, St. Paul, Minnesota; admit that the MEA is not an exclusive representative under Minnesota Statutes §179.67 and that some of the fair share fees deducted under Minnesota Statutes §179.65 Subd. 2 are furnished to the MEA, but deny the remaining allegations of Paragraph 9 of the amended complaint.

7. Admit that IMPACE is an unincorporated association with its principal office located at 41 Sherburne Avenue, St. Paul, Minnesota; admit that IMPACE is not an exclusive representative under Minnesota Statutes §179.67 but deny the remaining allegations of Paragraph 10 of the amended complaint.

8. Admit that the MCCFA is an unincorporated association with its principal office loated at 41 Sherburne Avenue, St. Paul, Minnesota and it is an employee organization which has been certified as the exclusive representative of the plaintiffs under Minnesota Statutes §179.67; admit that the MCCFA has entered into a contract with the Minnesota State Board for Community Colleges ("Board") pursuant to Minnesota Statutes §179.70; admit that the MCCFA has collected a fair share fee pursuant to Minnesota Statute §179.65 Subd. 2 but deny the remaining allegations of Paragraph 11 of the amended complaint.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained within Paragraph 12 of the amended complaint.

10. Admit that the Board is established under Minnesota Statutes §136 and that the Board is a public employer under Minnesota Statutes §179.63 Subd. 4 but deny the remainder of plaintiffs' allegations within Paragraph 13 of the amended

complaint which attempt to interpret the statutes and allege that the statutes speak for themselves.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14 of the amended complaint.

12. Admit that defendant Ziegler is the Commissioner of Finance for the State of Minnesota and that defendant Bjornson was the Treasurer of the State of Minnesota, but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 15 of the amended complaint.

13. Admit that Charles A. Swanson is the Director of the Bureau of Mediation Services and that the MCCFA is the certified exclusive representative for faculty members within the community college system and further allege that Minnesota Statutes §179.02, 179.67 and 179.71 speak for themselves.

14. To the extent that Paragraphs 17 and 18 of the amended complaint attempt to recite or interpret the referenced sections of the Minnesota Public Employment Labor Relations Act (PELRA), defendants allege the statutes speak for themselves.

15. Admit that the MCCFA and its officers have exercised the powers vested in them pursuant to PELRA; except as hereinbefore admitted, defendants deny the allegations of Paragraph 19 of the amended complaint.

16. Admit that the Board, defendant college officials and their agents have undertaken to fulfill various of their statutory duties under PELRA but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 20 of the amended complaint.

17. Admit that the MCCFA and the Board entered into a contract pursuant to Minnesota Statutes §179.70 but deny the interpretations attributed to the provisions of the contract and allege that the contract speaks for itself to the extent referenced in Paragraph 21 of the amended complaint.

18. Deny the allegations of Paragraph 22 of the amended complaint.

19. Admit that the MCCFA has requested a fair share fee check-off of $94.48 for the 1973-74 school year and $118.13 for the 1974-75 school year and have notified the plaintiffs and the Board of such requests; except as hereinbefore admitted, defendants deny the allegations of Paragraph 23 of the amended complaint.

20. Admit that the requests for fair share fee check-offs as admitted in Paragraph 19 of the answer were made with the anticipation that the Board would act pursuant to its statutory responsibilities; except as hereinbefore admitted, defendants deny the allegations of Paragraph 24 of the amended complaint.

21. Deny the allegations of Paragraphs 25, 26 and 27 of the amended complaint.

22. Admit the fair share deductions for the academic years 1973-74 and 1974-75 roughly equal respectively 94% and 97% of the annual dues charged to members of the MCCFA; except as hereinabove admitted defendants deny the allegations of Paragraph 28 of the amended complaint.

23. Deny the allegations of Paragraphs 29 and 30 of the amended complaint.

24. Admit that certain of the plaintiffs have protested the payment of their fair share fees and have requested an accounting; except as hereinbefore admitted, defendants are without knowledge or information sufficient to form a belief

as to the truth of the remaining allegations of Paragraph 31 of the amended complaint.

25. Admit that the MCCFA has not provided an accounting to the plaintiffs but are without information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 32 of the amended complaint.

26. Defendants reallege Paragraphs 1 through 27 of their answer in response to the allegations of Paragraph 33 of the amended complaint.

27. Defendants deny the allegations of Paragraphs 34, 35, and 36 of the amended complaint.

28. Defendants reallege Paragraphs 1 through 27 of their answer in response to the allegations of Paragraph 37 of the amended complaint.

29. Defendants deny the allegations of Paragraphs 38, 39 and 40 of the amended complaint.

30. Defendants reallege Paragraphs 1 through 27 of their answer in response to the allegations of Paragraph 41 of this amended complaint.

31. Deny the allegations of Paragraphs 42 through 52 of the amended complaint.

32. Except as expressly admitted or denied hereinabove these defendants deny each and every allegation contained in plaintiffs' amended complaint.

SECOND DEFENSE

The court lacks jurisdiction over the subject matter.

THIRD DEFENSE

The amended complaint fails to state a cause of action upon which relief may be granted as to these defendants.

FOURTH DEFENSE

Plaintiffs' claims are barred by the applicable statutes of limitation.

FIFTH DEFENSE

The Public Employment Labor Relations Act is not violative of the United States Constitution on its face or as applied by these defendants.

SIXTH DEFENSE

Plaintiffs have failed to properly exhaust their administrative remedies.

SEVENTH DEFENSE

If this court determines that it has jurisdiction, it should abstain from hearing this matter.

WHEREFORE, these defendants request that plaintiffs' amended complaint be dismissed and that these defendants be granted their costs and disbursements.

Dated: February 6, 1976

OPPENHEIMER, WOLFF, FOSTER, SHEPARD AND DONNELLY

By /s/ Eric R. Miller

By /s/ Keith E. Goodwin

Attorneys for Defendants Minnesota Community College Faculty Association, Minnesota Education Association, Independent Minnesota Political Action Committee for Education, National Education Association, James A. Norman, James K. Durham, Robert Bell, Calvin Minke, Ralph S. Chesebrough, Donald Holman, William M. Mondale, James Rosasco, Alfred F. Provo,

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[Pl. Ex. 1, R. 92] EMPLOYMENT CONTRACT
1979 - 81
Between
MINNESOTA STATE BOARD FOR COMMUNITY COLLEGES
and
MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION

ARTICLE I
RECOGNITION

The Employer recognizes the Association as the exclusive bargaining representative for all instructors, counselors, and librarians who work more than 14 hours per week or more than 35% of a normal work week and more than 100 work days per calendar year; excluding presidents, vice presidents, assistants to presidents, administrative assistants, deans, assistant deans, associate deans, directors, assistant directors, and all classified personnel. In accordance with the Bureau of Mediation Services Case No. 69-PR-422, the term "employ-

ee," when used hereinafter in the Contract shall refer to all employees of the designated bargaining unit, and reference shall include both male and female employees.

The Employer will not during the life of this Contract meet and negotiate or meet and confer relative to terms and conditions of employment with any employee or group of employees who are covered by this Contract except through the exclusive bargaining representative.

If titles or positions are created during the life of this Contract that are not listed above, the parties will meet and attempt to agree on the inclusion or exclusion of the new title or position. If the parties cannot agree, the question will be submitted to the Director of the Bureau of Mediation Services for a determination of the inclusion or exclusion of such title.

ARTICLE V

MANAGEMENT RIGHTS

It is recognized that except as expressly stated herein the Employer shall retain whatever rights and authority are necessary for it to operate and direct the affairs of the colleges in all of their various aspects, including but not limited to, the educational policies of the colleges; the right to direct and assign employees; to schedule working hours; to determine whether goods or services should be made or purchased; to make and enforce reasonable rules and regulations affecting terms and conditions of employment that are uniformly applied and enforced in accordance with the provisions of the rules or regulations. Any term or condition of employment not specifically established by this Contract shall remain solely within the discretion of the Employer to modify, establish or eliminate.

ARTICLE VI
ASSOCIATION RIGHTS

Section 5. *Association Local Committees.* The Association shall establish from one to six committees. Membership on each committee shall not exceed six. The number of committees may be limited to three at the College President's request or to a lesser number with Local Association agreement. Committees will be assigned responsibility for one or more of the following topic areas: Personnel, Student Affairs, Curriculum, Facilities, Fiscal Matters, and General Matters. The exchange of views process is recognized as being a significant and necessary part of the local campus operation.

Section 6. *Association State Committee.* The State Association shall establish a committee of no more than eight members to meet and confer with the Minnesota State Community College Board for discussion and mutual exchange of ideas regarding statewide matters which are considered significant by the State Association or the Employer. The Employer shall provide the facilities and set the time for such conferences to take place, and such conferences shall be held at least three times a year. Agenda will be prepared and distributed one week in advance by the Board President or her/his designee and will include all items submitted by the State Association. The agenda shall also include all items submitted by the Board President.

Section 7. ***Access to Information.*** **Upon request, the Employer or the employer's designees agree to provide the Association at state and local levels information available to it concerning the professional staffing and financial resources of the Minnesota Community Colleges, including routine reports, registry of professional personnel, tentative budgetary requirements and allocations, agendas, and minutes of Board**

meetings, names and addresses and position on the salary schedule of all employees in the bargaining unit, and such other information requested by the Association in contract matters or in the processing of a grievance.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

4-74 Civ. 659

LEON W. KNIGHT, et al.,

Plaintiffs,

vs.

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, et al.,

Defendants.

STIPULATION

The parties to the above-referenced case, through counsel, hereby stipulate that the facts hereinafter set forth are true; that all documents appended hereto are true and correct copies of their originals; and that the following statement of facts, together with all documents identified herein and appended hereto, may be relied upon by the Court in the determination of the legal issues raised by the pleadings. This Stipulation is made by the parties to this proceeding upon and subject to the conditions that:

a) all facts recited herein are stipulated by and between the parties for the purposes of this proceeding only and nothing contained herein shall constitute an admission by any party for any other purpose, action or proceeding;

b) this stipulation to the truth and accuracy of the facts included herein and the documents appended hereto, does not constitute an admission by either party with respect to the relevance or materiality of any such fact or document.

IT IS HEREBY STIPULATED among the parties as follows:

1. The State of Minnesota has a legitimate interest in promoting orderly and constructive relationships between public employers and employees.

2. Unresolved disputes between public employers and their employees are detrimental to the public interest as well as to the interests of the involved parties.

3. The goal of "labor peace"* is as important in the relationship between a public employer and its employees as it is between a private employer and its employees.

4. A statutory system which permits employees in a unit to be represented by an exclusive representative results in the avoidance of confusion, conflicting demands, and dissension that would result from more than one representative claiming to represent all the employees in said employee unit.

5. The State of Minnesota has a legitimate interest in maintaining "labor peace" by entering into agreements with an exclusive representative for each employee unit, which agreements are not subject to direct challenge by rival employee organizations claiming to represent the same employees in each unit.

6. The State of Minnesota has a legitimate interest in the financial stability of an exclusive representative of its em-

* "Labor peace" as used in this stipulation and at all other places herein is defined as a stable relationship between employer and employees which is characterized by the absence of work stoppages, work slowdowns, or unresolved disputes, and by the efficient continuation of public business and services.

ployees to the extent that that exclusive representative has sufficient financial resources to perform those statutory duties pursant to the Public Employment Labor Relations Act that are consistent with the Minnesota and United States Constitutions.

7. The State of Minnesota has determined that enactment of the Public Employment Labor Relations Act is the means by which it can best deal with its employees in a fair, efficient, and peaceful fashion.

8. The defendant SBCC has never denied any of its employees the opportunity to communicate to board members views on any subject related to matters affecting the community colleges.

Dated December 5, 1979.

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
(TITLE OMITTED IN PRINTING)

STIPULATIONS BETWEEN
PLAINTIFFS AND DEFENDANT STATE OFFICIALS

16. The collective bargaining agreement between the Defendant MCCFA and the Defendant SBCC covering the years 1977-79, which, for all purposes material here, is identical to the contract covering the years 1975-77, provides in pertinent part as follows:

ARTICLE I
RECOGNITION

The Employer recognizes the Association as the exclusive bargaining representative for all . . . employees of the designated bargaining unit, and reference shall include both male and female employees.

The Employer will not during the life of this Contract meet and negotiate or meet and confer relative to terms and conditions of employment with any employee or group

of employees who are covered by this Contract except through the exclusive bargaining representative . . . .

17. Article VI, Section 6 of the collective bargaining agreement between Defendant SBCC and Defendant MCCFA has provided as follows:

> Section 6. *Association State Committee.* The State Association shall establish a committee of no more than eight members to meet and confer with the Minnesota State Community College Board for discussion and mutual exchange of ideas regarding statewide matters which are considered significant by the State Association or the Employer. The Employer shall provide the facilities and set the time for such conferences to take place, and such conferences shall be held at least three times a year. Agenda will be prepared and distributed one week in advance by the Board President or her/his designee and will include all items submitted by the State Association. The agenda shall also include all items submitted by the Board President.

18. Defendant MCCFA has, pursuant to Minn. Stat. § 179.65, subd. 3, and pursuant to the portion of the collective bargaining agreement referred to in paragraphs 16 and 17 above, met and conferred with Defendant SBCC. These meetings have, at all times material, occurred approximately every two months. These meetings have covered the following subjects, among others:

a) interpretation of the Professional Staff Contract;

b) evaluation of administrators of the various colleges;

c) the state plan for vocational education as it applies to faculty teaching load;

d) student rights;

e) planning of new facilities;

f) academic accreditation of the colleges operated by Defendant SBCC;

g) merger of higher education systems in Minnesota;

h) student activity fees;

i) due process for students;

j) selection of college Presidents.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
(TITLE OMITTED IN PRINTING)

DEFENDANT LABOR ORGANIZATIONS' AGREED UPON STIPULATIONS OF FACT

1065. The process of "meet and negotiate" and "meet and confer", as defined in Minn. Stat. § 179.63 deals, in part, with the question of compensation for community-college teachers.

1066. The process of "meet and negotiate" and "meet and confer", as defined in Minn. Stat. § 179.63 deals, in part, with the question of job security for community-college teachers.

1067. The process of "meet and negotiate" and "meet and confer", as defined in Minn. Stat. § 179.63 deals, in part, with the question of educational services in the community colleges.

1068. The process of "meet and negotiate" and "meet and confer", as defined in Minn. Stat. § 179.63 deals, in part, with the question of professional standards for community-college teachers.

1069. The process of "meet and negotiate" and "meet and confer", as defined in Minn. Stat. § 179.63 deals, in part, with the question of working conditions for community-college teachers.

1070. Improving the effectiveness of the process of "meet and negotiate" and "meet and confer", as defined in Minn. Stat. § 179.63, is related to that process.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
(TITLE OMITTED IN PRINTING)

PLAINTIFFS COMBINED AND INDEXED
REVISED STIPULATIONS
AND SUPPLEMENTARY EXHIBITS

1705. Since 27 April 1973, participation on faculty-committees that "meet and confer" with the community-college Board and its agents, as "meet and confer" is defined in Minn. Stat. § 179.63, subd. 15, has been limited to members of MCCFA as a matter of MCCFA's policy and practice.

1706. The original and successor agreements between MCCFA and the community-college Board provide, in implementation of Minn. Stat. § 179.66, subd. 7, that the Board and its agents will not "meet and confer", as "meet and confer" is defined in Minn. Stat. § 179.63, subd. 15, with any faculty-member covered by the agreements, including plaintiffs, except through MCCFA.

1707. MCCFA's position under Minn. Stat. § 179.66, subd. 7, is that, with respect to any terms and conditions of employment covered by the collective-bargaining agreement between MCCFA and the community-college Board, the Board and its agents may not "meet and confer", as "meet and confer" is defined in Minn. Stat. § 179.63, subd. 15, with any faculty-member (including plaintiffs) who is not a designated representative of MCCFA.

1711a. Chancellor Helland testified under oath as follows (Vol. 2, pp. 42-43):

Q. So that if a college President heard from the Faculty Association expressing point of view A, he would be precluded

from the contract by saying, "I doubt that that's what the majority of our faculty really think and and I'm going to take a poll or do a summary or a survey to find out what they really think."

A. What they really think isn't his concern; what the Association says they think is his concern.

Q. And that's because of the contract.

A. Right.

Q. In Exhibit F to the—

A. Excuse me. I wonder if it's entirely because of the contract or whether it's because of PELRA and the designation of units. Maybe that's a small differentiation.

Q. Alright, I accept that addition to your answer.

1711b. Chancellor Helland testified under oath as follows (Vol. 1, pp. 45-47);

Q. Well, during the first period, that is, the period of informal recognition, was the individual free to discuss anything he wanted to with the administrator of his college, regardless of what the administrator's reaction might be?

A. Surely.

Q. And then after the action formally recognizing, in a limited way, the Faculty Association on May 15, 1969, and up to the decision in 1971 by Mr. Buck, was an individual free to discuss anything he wanted with the administrator?

A. Surely.

Q. And then after Mr. Buck made his decision in January of '71, was an individual free to discuss anything he wanted?

A. Yes.

Q. Has that been also true since the adoption of the contract in April of '73?

A. Well, I think that, technically, the person has been free to do that and the administrator's been free to do that, but I

think that practically—many such situations have disappeared because of the fear on the part of the administrator that they would be meeting and conferring or negotiating with someone other than the exclusive representative, and the problem of defining what's meeting and conferring and what's negotiation, I think has been the basic problem. There's much less tenseness on that issue now than after the signing of the first contract.

Clearly the administrator, under our contract, can't take the opinions of any individual faculty member as the opinion of the faculty. Only the exclusive representative can state what the opinion of the faculty is.

Q. Can he take the opinion of an individual faculty member into account in making his decision even though it is at variance with the position of the Faculty Association?

A. I'm sure that happens, but the position of the Faculty Association—or the position of the faculty is the Faculty Association's.

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[R. 398] Q. Now, I would like to direct your attention to the pre 1973, and specifically the pre September 1973 faculty administrative structure on each of these campuses. I wonder if you could describe what the structural relationship was on those campuses?

A. I don't think I can do that without considerable [R. 399] investigation. The structure was different on each cam-

pus. Prior to that time there was no set patterns for relationships on campuses. That was determined at the campus.

Q. Did the faculty administrative structure become more standardized after—or as of 1973?

A. I'm not sure what you mean by "structure", but the communications between them became more standardized.

Q. I see. Do you have any knowledge at all of what the communication channels were that were available to teachers and administrators prior to September of 1973?

A. Well, I am only speaking from general memory and general knowledge, but I think the range was all the way from very authoritariate campuses where decisions were made by presidents with very little communication, to rather democratic campuses where there was considerable involvement, and the whole gamut existed in between those.

Q. I see. What structure for communications occurred in 1973, can you describe that?

A. I assume you are speaking of the first contract?

Q. Well, yes, if the change in structure was generated by the first master contract, yes, I am.

A. The master contract provided that communication would take place through six specified committees with whom the administration of the college would meet and confer, [R. 400] exchange all the views.

Q. Now, is the contract that you are referring to a master collective bargaining agreement?

A. Yes, the contract between the State Board and the Faculty Association.

Q. And that contract had application on all of the campuses in the community college system, is that correct?

A. That's right.

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[R. 408] Q. Now, then, getting back to the process of negotiations for a minute, I wonder if you could tell me whether the State Board for Community Colleges engages in a so-called meet and confer process with the Faculty Association as opposed to a meet and negotiate process with the Association?

A. The Board meets directly with the Faculty Association only [R. 409] on a meet and confer contact. Our procedure for the past several years have been to have six such meetings a year, every other month, hour and a half, which the Board discusses any topic on the agenda. That number will be reduced to three in the coming year at the request of the Association.

Q. Who from the State Board participates in the meet and confer meetings?

A. The entire State Board.

Q. And who from the Faculty Association participates in those meet and confer meetings?

A. They have an elected committee, I believe of six people, sometimes the president of the Association is there, usually the executive director of the association is there, I am usually and our director of personnel is usually there. Other members of my staff may come and go depending on the issue.

Q. And you participate in those meetings, also, is that correct?

A. Yes.

Q. Are these meetings held pursuant to the master contract that is negotiated between the State and the Faculty Association?

A. The master contract sets up the procedure for such meetings. I don't believe it sets up the number of meetings or time [R. 410] of meetings. I believe that's been set by Board rule. Master contract specifies a State committee which will be the official representative for the meeting of that type with the Board.

Q. Prior to the first contract becoming effective, was there a meet and confer process in existence at that time?

A. No.

Q. Who of the faculty on the college compuses has access to the Board via this meet and confer process?

A. Those are open meetings, the six members are elected by the Association. I don't know how that happens. We get a certification who the six members are and those six members sit across the table from me and the Board members with the extra people I have mentioned. There have at times been observers, but I don't know how that's done.

Q. At these meetings you say that you sit across the table from one another. Do you sit across the table from one another in essentially the same way as you sit across the table from one another when you are negotiating?

A. No, not really. As a matter of fact, we, not always, we are usually there first, we are on one side of the table and they are on the other. It isn't that formal relationship.

Q. I see. Of the people, the representatives for the State Board, who of them speak and address the group?

[R. 411] A. The chairperson of the State Board usually moderates the meeting. Anyone is free to speak from either side and usually does.

Q. So this is fairly free exchange of views at these meetings, is that correct?

A. Yes, it is.

Q. Do the observers participate in the exchange of views?

A. I can't remember any occasion when they have even asked to participate.

Q. Has there been any occasion when anyone has been at one of the meet and confer meetings and has offered to address the group but has been restricted from doing so?

A. No.

Q. Now you are aware that Mr. Leon Knight from North Hennepin Community College is one of the plaintiffs in this lawsuit, are you aware of that?

A. Yes, I am.

Q. What is the present policy at these meet and confer meetings on the question of whether Mr. Knight, who is not a member of the MCCFA, as to whether Mr. Knight may seek and address the Board on any subject?

A. There is no Board policy in that regard. There has never been such request. The Board has never discussed that possibility, but the meetings are open. Our rules say it's up to the Board to determine whether to recognize members [R. 412] of the audience, doesn't say whether they should or should not. That rule, however, was written before we had meet and confer sessions, written really for public meetings of the Board when they do business. I assume they would operate the same way, the Board would determine whether they speak or not. It's not an open meeting to the extent anybody can come in and talk at any time.

Q. What subjects are discussed at these meet and confer meetings?

A. I would say that most of the discussions centers around rules that we propose or questions that the Faculty Association representatives ask about administration. A lot of it is just exchange of information, where we propose a rule we ask for their reaction to it. We normally don't act until there have been several such meetings.

Q. What do you mean by a rule?

A. For example, during this past year we have had many discussions on a rule that has to do with what the assigned fields of instructors are and two meetings ago, the meeting before last, of the State Board policy was passed in regard to

assigned fields. That has been discussed in meet and confer sessions for a year at least.

Q. Do the members of the Faculty Association team at the meet and confer meetings attempt to influence the Board's decisions on these rules?

[R. 413] A. Yes.

Q. Are they sometimes successful?

A. Yes.

Q. The team I assume presents the Faculty Association position on a particular rule, would that be correct?

A. Yes.

Q. And do you regard this team as the spokesman for the Faculty Association?

A. Yes.

Q. Do you recognize the team as the spokesman, I realize I'm using that term loosely, but do you recognize the team from the Faculty Association as the spokesman for all of the faculty on all of the college campuses, that is all of the teachers?

A. We recognize, I think the Board's position and mine are the same, we recognize that team as giving the official faculty position. We realize there may be other faculty positions held by individuals in the faculty, but official faculty position is one given by that team.

Q. You discuss such topics as faculty involvement in the selection of administrators in faculty, is that correct?

A. We may have, that would be a possible topic.

Q. What is the nature of that discussion?

A. You are referring in general terms to any type of discussion?

Q. No, I'm referring to the nature of the discussion held on [R. 414] the subject of faculty involvement in selecting administrators in faculty. What is that?

A. I don't remember any discussion on that topic.

Q. Okay.

A. All I said was that's a possible type of topic for discussion.

Q. Yes. Do you discuss faculty involvement in the enrollment recruiting and enrollment and recruiting of staff?

A. I don't remember that that's ever been discussed.

[R. 415] Q. (By Mr. Swenson Continuing.) The faculty—you discuss faculty involvement in promotion of staff?

A. I don't think that's ever been discussed. But our rule says that any topic given by the faculty a week prior to the meeting can be put on the agenda, but any of those are possible topics. I'm saying I don't remember any discussion of those topics.

Q. Now, I would like to address certain questions to the specific community colleges, that is the specific campuses. Would it be correct to say that the Collective Bargaining Agreement that presently exists governs the procedures for faculty and Administration exchange of views on all of the campuses?

A. Yes.

Q. Now, by the way, the term "exchange of views" is a term that means—or used to mean—at one time meant "meet and confer", would that be correct?

A. I don't know.

Q. You don't recall whether—the meetings that you have with the—the meetings that the Board had with the faculty team, the Faculty Association team, so far as you know continues to be called meet and confer sessions, is that correct?

A. Yes, I think I'm correct in saying that the meetings held between the State team and the State Board are referred [R. 416] to as meet and confer, and the meetings held between

faculties on campus and Administrations on campuses are referred to as exchange of views.

Q. I see. The Collective Bargaining Agreement that has been negotiated provides for these Exchange of Views Committees on all of the campuses, is that correct?

A. Yes, it does.

Q. And I believe you stated that the Exchange of Views Committees that are possibly on the campuses are—well, perhaps you didn't, but I think they are Personal Student Affairs, Curriculum, Facilities, Fiscal Matters and General Matters, would that be correct?

A. I believe that's correct. In the first contract those six were specified. Each contract has changed that a little bit so they can have just one committee now.

Q. Oh, so each campus is not required to have all six, but may have all six?

A. Yes. They are no longer required. If I remember correctly, the President can reduce the number to three, and with agreement from the Association it can be reduced to one.

Q. Now, would it also be correct to say that all exchange of views between the faculty and Administration on campuswide issues are channeled exclusively through these Exchange of Views Committees?

A. If you are using exchange of views in a formal sense, I [R. 417] think that's true. If you are talking about informal communications, I don't think it's true.

Q. So as to all formal communications that would be correct?

A. Yes.

Q. Would it be, also correct to say that every subject appropriate for an exchange of views—for exchange of views between the Faculty Association and the Administration will

be within the jurisdiction of one of these Exchange of Views Committees?

A. I'm not sure I understand your question.

Q. Well, whatever subject that might be appropriate for exchange of views in a formal sense regarding campuswide policy or some matter affecting all of the teachers on campus or all of the students on campus, that subject would be within the jurisdiction of one of these Meet and Confer Committees, wouldn't it?

A. The Meet and Confer Committees have no jurisdiction, only the Administration has the jurisdiction, only the Administration can set policy. But I assume that any topic that might come up on the campus could come within the purview of one of those committees. In other words, they could represent it.

Q. So these committees on all of these campuses develop campuswide policies to be recommended to the Administration?

[R. 418] A. It's possible. I don't know that they all do, but certainly that possibility is there.

Q. The structure is set up so that could happen?

A. Yes.

Q. And that's the purpose of the structure, is that not correct?

A. Well, that's one of the purposes. The other purpose is that the Administration, which I think more often develops the policy or the procedure or regulation for whatever, and recommends that, then discusses what it recommends with the Exchange of View Committee.

Q. All right. Now, then, what Administration recommends would be discussed by the Administration with the Exchange of Views Committee, but not with just any teacher on campus, would that be correct?

A. Well, I don't think there is any restriction on an Administrator talking to a faculty member, whether the faculty member is a member of the Union or not, but that would be an individual opinion. The official opinion comes from the Exchange of Views Committee.

Q. It is the official and the formal exchange of viewpoints that calls upon the—that calls upon the Administration to present its position to the Exchange of Views Committee, is that correct?

A. I think, if I understand what you're saying, it's correct. [R. 419] The contract provides that the Administration will not adopt a rule affecting certain—and I can't remember those verbatim—there are certain items that affect the faculty that must be taken through the exchange of views process before the rule is enacted. If there is not an agreement, it must be discussed with a second meeting before the rule is enacted. Whether there is an agreement or not, the Administration has authority to act.

Q. Prior to the first contract coming effective was there a requirement that the Administration presents their position or their policy proposals to some Exchange of Views Committee before the policies are implemented?

A. There was no such Statewide policy. It's possible that the constitutions of individual campuses might have required that. As I said in my earlier answer to you, those vary greatly across the campuses that existed at that time.

Q. On all of these campuses, these Exchange of Views Committees are Faculty Association Committees, isn't that correct?

A. That's correct.

Q. Would it be correct to say, also, that the exchange of views process on each of these campuses is a process by which

at least in part the Faculty Association attempts [R. 420] to influence Administrative decisions?

A. Yes, I think so.

Q. Would it be correct to say, also, that on all of these campuses the Administration recognized the Faculty Association Exchange of Views Committees as the exclusive channel—or I should say the exclusive representative of campus faculty views on campus issues?

A. Could I pause just a minute and say that "faculty" is too broad a term here. There are faculty members who are not members of the bargaining unit, but if you are speaking of the bargaining unit faculty, then the Association is the exclusive representative of that group of faculty.

Q. All right. And that exclusivity exists by virtue of the contract, would that be correct?

A. Yes, I think the possibility for it exists by virtue of the law, the actual fact that it occurs is by the contract.

Q. Would it be further correct to say that the purpose of the exchange of views processes on the campuses, on all of the campuses, the purpose is to provide a structure or an avenue by which the Faculty Association can attempt to influence Administrative decisions?

A. That's a purpose. I don't think it's necessarily the only purpose. It's also a vehicle by which the Administra- [R. 421] tion can inform the faculty of its official positions and so on.

Q. Is it not also true that on each of the college campuses the administration recognizes that it must meet and confer with the Faculty Association regarding campus policies?

A. Yes, that's specific in the contract.

Q. Would it be correct, also, to say that the State Board for Community Colleges and your office recognizes that it must meet and confer exclusively with the Minnesota Community College Faculty Association?

A. Well, there is no requirement that my office meet and confer with them, but there is a requirement that the Board meet with them.

Q. And you recognize, also, that—or the State Board recognizes that it must meet and negotiate exclusively with the Faculty Association, is that correct?

A. I am not sure the statement is entirely correct. The negotiation really is conducted by the Commissioner of the Department of Employee Relations, not by our Board. The contract is written for the Board by the Commissioner of Employee Relations.

Q. The Commissioner of Employee Relations meets and negotiates exclusively with the Faculty Association?

A. That's correct.

Q. Now, the meet and negotiate procedure under the Public [R. 422] Employee Labor Relations Act is the exclusive means for the Faculty Association to express its views to the State Board on matters of campus policy, would that be correct?

A. No, I think that would not be correct.

Q. Okay. In what respect would it not be correct?

A. The negotiation process is used only to negotiate the items that eventually turn up in the contract. The meet and confer process is used to discuss items that are not covered in the contract or the interpretations of items that are covered.

Q. So the meet and confer process becomes the exclusive means for expression of views, would that be correct?

A. After the contract.

Q. And the meet and confer process would be the exclusive means for formal expression of views by any teacher on the campus, would that be correct?

A. The meet and confer process is the formal process by which the official position of the faculty as a statewide group is expressed to the Board. When the Board holds its meetings on college campuses, there is opportunity for individual faculty members or the campus faculty to express opinions to the Board in a free and open meeting. That's not considered a meet and confer meeting.

[R. 423] Q. I see. All right.

A. If it would help you, I should point out that the Board has its regular business meetings on college campuses, except for the organizational meeting in July. Every other month they hold a business meeting—they rotate from college campus to college campus. It takes three-and-a-half years to make the swing around, but they go in an orderly progression from college campus to college campus. The morning of that meeting is entirely devoted to the affairs of that campus. The Board is available on campus. Individuals can talk to the Board. Groups can talk to the Board.

Q. In an informal way?

A. Yeah.

Q. Does the State Board recognize that it must not meet and confer with other faculty organizations?

A. I assume you are speaking of within the bargaining unit. Yes.

Q. Yes. And the State Board further recognizes that it must not meet and negotiate with any other faculty organization?

A. Again, within the bargaining unit, yes. We have a large number of faculty members, as you know, who are part-time and do not fall within the definition of the bargaining unit.

[R. 424] Q. And you recognize, also, that—or I should say would it be correct to say that the State Board recognizes that

it must not meet and negotiate with individual teachers who demand such an opportunity?

A. Must not meet and negotiate, yes.

Q. And the Board also recognizes that it must not meet and confer formally with individual teachers who might demand such an opportunity?

A. Yes.

Q. And that is because, is it not, that for the Board to do so would violate the Faculty Association's exclusive privilege to meet and negotiate, is that correct?

A. My understanding is that to do otherwise would violate the law in the collective bargaining.

Q. Both as to negotiation and as to conferring?

A. Meet and confer in a formal sense of the word, yes.

Q. So the State Board, in fact, does not meet and negotiate with any faculty group other than the MCCFA?

A. That's correct.

Q. And in fact, on the college campuses the Administration does not—or at least is not supposed to meet and confer or engage in an exchange of views with any group other than the Faculty Association?

A. In a formal sense, yes.

Q. Specifically on each of the college campuses the [R. 425] Administration are prohibited from and recognize that they must not engage in negotiations with teachers who are not members of the Faculty Association?

Mr. Mueting: Your Honor, I am going to at this point object. I believe this is the third time we have gone over this subject.

Mr. Lindquist: I think it's getting repetitive, yes.

Mr Swenson: All right. We will go on.

[R. 426] Q. Is the Minnesota Community College Faculty Association completely independent from the State Board for Community Colleges?

A. Yes.

Q. And the Faculty Association so far as you know is not a part of the State government, is that correct?

A. It is not.

Q. Would it be correct to say that there are substantial differences of opinion between the State Board and the Faculty Association on issues affecting community college teachers?

A. Yes, I think it would. Also substantial area of agreement, however.

Q. Now, prior to the effective date of the first master contract teachers and administrators on the college campuses could freely exchange views on any subject affecting teachers on the campus policy, is that correct?

A. The words "exchange view", those words are hard to use in this discussion, they have a formal connotation.

Q. All right, let's say just discuss.

A. Yes.

Q. And this would be true even where the teacher tried to influence administrative decision?

A. Yes.

Q. And now the free exchange or the free discussion has [R. 427] become an exchange of views in the formal setting, isn't that correct?

A. I don't think it's correct to consider one completely replacement for the other. It's like different processes. You referred earlier to individual people, that doesn't, you can't compare that with the exchange of views process that takes place now.

Q. Well, as to the official position of the Faculty Association, it is an exchange of views process that communicates the views to the administrator, as you have said?

A. Yes, however, I'm not sure that there was an official position in faculty in most cases before, so it's hard to compare.

Q. Now, did this free exchange of views prior to 1973 in anyway interfere with the operation of the college?

A. From the point of view of administration, I don't think it did.

Q. Did it at all interfere with the quality of a particular teacher's performance as a teacher?

A. I really have no way of knowing that.

Q. You are not aware that the answer to that question would be yes?

A. I'm not aware it would be yes or no, I'm not that close to it.

Q. Are you aware whether there has been some apprehension [R. 428] among teachers and administrators as to what they may or may not freely discuss upon the coming of the first contract?

A. I was aware that there was that feeling at that time, yes.

Q. Are you aware that there is any apprehension any more?

A. Well, I think the whole atmosphere is much more relaxed now than it was eight years ago.

Q. Things have settled down and become formalized?

A. Formalized or informalized, at least there isn't the strain that there was after the first contract.

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[R. 431] CROSS-EXAMINATION

By Mr. Mueting:

Q. Chancellor Helland, you have at various times in your responses to Mr. Swenson's questions made a distinction between formal meet and confer and other types of communication. What were you referring to when you talked about formal meet and confer?

A. Meetings specified in the contract.

Q. What is your understanding of that meetings as specified in the contract.

A. The contract sets up a meet and confer at the State level and another one at the college level and requires that the Administration, each level meet with that committee, and that's what I meant when I referred to the meet and confer sessions.

Q. Or exchange of views as that term—

A. Exchange of views at the college level, meet and confer usually at the system level.

Q. Is it your understanding that that is the only type of—or the only forum that college Presidents or Administrators or the Board can utilize to receive information from anyone including members of the bargaining unit?

A. No.

[R. 432] Q. Are there other forums for faculty members to express views to community college administrators?

A. "Forum" may be too strong a word, but there are opportunities. I mentioned the one when the Board is on campus. There an opportunity for people to speak to the Board in an informal way. I know that Presidents have used a variety of means to get opinions of people regardless of whom they are, and usually it's a mixed group: students, faculty, Administrators, whomever, some kinds of town meeting—one has held such a meeting, for example, I know another President who

makes himself available in the college commons in the cafeteria for people who would want to come to him and talk on any subject. But those are not within the context of what we would describe as meet and confer or exchange of views.

Q. Is it your understanding that these processes outside of meet and confer are utilized to obtain information concerning any subject that the employees may deem important to discuss?

A. Yes. I think in most cases the Administration only makes itself available. It doesn't utilize that as a means to go and get information as much as to give information.

Q. Have you ever met informally with faculty members?

[R. 433.] A. Many faculty members have stopped in my office and said, "I would like to talk to you," and I said, "Come on in." I have talked to many faculty members over the years unofficially.

Q. Have you ever advised any faculty members over the years that you were unwilling to listen to anything that they have to say about the contract or terms and conditions of employment or anything that they wish to speak about?

A. No. I have never told them that I wouldn't listen to them. I have, however, at times told them, "I can't negotiate that with you or I can't—" You know, that's, you know, another area.

Q. Have you ever had any of the Plaintiffs in your office as far as you know, the Plaintiffs in this lawsuit, to discuss whatever they wish to discuss?

A. I am not even aware of who the Plaintiffs are. I believe Virginia Lanegran is the one. Virginia Lanegran has worked in my office for the last couple of years.

Q. Over that period of time have you had discussions with her?

A. Oh, yes.

Q. And has she initiated some of those discussions with you?

A. Yeah.

Q. Have you ever advised her that you can't talk about any [R. 434] particular subject she wants to discuss?

A. No.

Q. Do you receive correspondence from faculty members?

A. Yes.

Q. Do you ever make any distinctions in these conversations between Association members and nonAssociation members?

A. No. I don't know who Associations members and non-Association members are.

Q. When we are talking about Association, we are talking about the Faculty Association?

A. Yes. I do make it very clear, Mr. Mueting, that the opinions expressed in any such conversation are strictly opinions of individuals, not of the Faculty.

Q. Have you ever or has the Board ever implemented a policy to prevent individuals from communicating their own opinions to you or to the Board?

A. No, I don't remember any such.

Q. In making policy decisions or rules, as far as you know, does the Board take into consideration only the views expressed by the Faculty Association representatives in the meet and confer sessions?

A. I think it's impossible for Management not to know what some other people feel, but there is no attempt made by Management to secure that type of opinion. We take the opinion of the Association as the opinion of the [R. 435] faculty. We, however, know just through whatever grapevine exists in the world what other individuals think on issues, and I think

it's fair to say that sometimes the Administration's position is influenced by that informal knowledge as well as by the—

Q. Could this or does this informal knowledge come to you, to the Board or to other Administrators through what we have just been discussing as informal communication with faculty members?

A. I think there is very little informal communication from individual faculty members to the Board because the Board is there so infrequently and the Board is kind of away somewhere, but I think the informal communication comes through Administrators who talk to many people on their campuses and know a great deal about how people feel, but that only shapes their own thinking and they really are talking to us as they feel individually. I should say there are a great number of opportunities for a Dean, for instance, to talk with individual faculty members. The contract requires conversations between them on certain topics. It's reasonable to assume that those discussions go into other areas as well.

Q. Have you ever been advised by the Faculty Association that you should not be communicating with nonAssociation members?

[R. 436] A. No, I think the Association has realized that I keep that line very clear as to what's the official view of the faculty and what's an individual bending my ear.

Q. There has been discussion about the policies and procedures and attitudes prior to 1973 and after 1973. Immediately after the first contract was implemented was there a period where people were having difficulty coming to grips with the implementation of the contract?

[R. 437] A. Yes, I think both sides were neophytes in this business. We didn't know what was right and what was wrong. The threat of unfair employment practices was frightening

to many people so people tended to play it very close to the vest and to do just what they knew they could do.

Q. (By Mr. Mueting continuing) Has that changed over the years?

A. Very much.

Q. Could you explain how it has changed?

A. I hear very little any more of people saying, "you can do this or you can't do that because the contract says you can or can't do it" in terms of communication.

Q. Prior to 1973 there was a faculty association in existence, wasn't there?

A. Yes.

Q. Did you have contacts, formal contacts with the association?

A. Yes.

Q. Was there any meeting and negotiating prior to 1973 between the Board or any representative of the State and the faculty association concerning terms and conditions of employment?

A. There was no negotiation.

Q. Did you meet with any individual representatives of the faculty association?

[R. 438] A. Yes. The common procedure then was for the faculty at each college, the faculty association at each college to elect a welfare chairman and I met with that group of welfare chairmen and we together developed what we thought was an appropriate position to be presented to the legislature in terms of salary increase, whatever, in the area of working conditions. Then, when we were agreed—the first couple times we were agreed—and the first couple times we were agreed—we had a long way to go and it wasn't hard to agree—and then I took that to the Board and the Board agreed, then I took

it to the legislature. After a couple sessions, however, legislative sessions, then we started to divide in terms of whether the Board and I felt that strongly as the faculties did about their need for increases, and that's when we kind of started to go our separate ways.

Q. We are talking about the prior to 1973?

A. Yes. We went through a series of relationships starting with a very informal recognition and ending up with quite a formal recognition that existed prior to the determination of the bargaining units.

Q. What was the recognition? What was meant by recognition?

A. The faculty association was recognized as the spokesman or spoke-whatever it is for the faculty and before the [R. 439] Board and the president of the faculty association was allowed to speak for the faculty at Board meetings.

Q. Was Leon Knight one of the presidents that spoke for the faculty association given the faculty's point of view on particular subjects?

A. He was the president at one time during that period, yes. I can remember that very clearly because the Board chairman introduced him one time as "neon light."

Q. Did you ever during this period prior to 1973 ever negotiate contracts with individuals, individual faculty members or individual groups of faculty members?

A. No. I assume by "contracts" you are referring to a document like the contract we have now.

Q. Negotiate those types of terms and conditions of employment that are binding on a particular individual as part of their employment relationship.

A. I think I should qualify my answer then, because we did—then, we went to the legislature with what we had agreed

upon and the legislature usually didn't give us everything we asked for. Then we went back to the faculty association and we met and conferred about what the Board rules were going to be, what the salary structure was going to be, what the leave policy was going to be and so on, but the Board at that time was in the position of making a rule after they dealt with meeting [R. 440] and conferring.

Q. In those cases who would have the ultimate decision-making authority?

A. The Board.

Q. Has the Board ever conferred decision-making authority—let's talk about prior to 1973. Did the Board ever confer decision-making authority on any faculty member or group of faculty members, talking about policy-making decisions, policy types of decisions?

A. The only authority conferred was to be the official spokesperson for the faculty.

Q. On individual compuses who was the party the Board delegated official responsibility for making policy-type decisions?

A. I don't wish to get into semantics, but in our system policy is not made at the campus level. It is only made at the Board level.

Q. Are there local types of policies?

A. There are local regulations, yes.

Q. Who has the authority to make those?

A. The president.

Q. Has that ever been delegated to any faculty member?

A. I think prior to 1973, as I said in my earlier testimony, there was a great range in terms of how much leeway was given and how much the president delegated of the [R. 441] president's authority. They came from a background of school

districts, and in some cases the faculty senate had considerable delegated authority, and in some cases none.

Q. Maybe you could explain that a little bit more as to how the community college system was initially formed.

A. Prior to 1963 the community college—there were junior colleges then that existed as units of public school districts. In 1963 the law set up a state board and gave that board authority to set up a system of state junior colleges. It allowed the school districts to come into that system if they wished to do so and if the state board wished to take them in, and they all asked to come in and the board took them all in. So that is how the state system started. But during those first years the colleges were very different in many respects, salary schedules—there were eleven different salary schedules the first year, for example, but by agreement with the faculties, really, at the insistence of the faculty we went toward the uniform salary schedule. Everyone wanted equal pay for equal work in the same system.

Mr. Mueting: Okay. I have no further questions at this time of this witness.

Mr. Goodwin: I have no questions.

[R. 442] Mr. Lindquist. Any redirect or recross or whatever?

REDIRECT-EXAMINATION

By Mr. Swenson:

Q. Dr. Helling (sic) you testified that in response to one of Mr. Meuting's questions that there seems to be a policy that you will talk to any faculty member about any topic, or the administration will talk to any faculty member about any topic.

A. I think it is an over statement to say that there is a policy. It is fair to say that that's a practice.

Q. This is the practice, yes. Now, will you do negotiations with Mr. Leon Knight, or neon light, whichever you prefer?

A. If you are talking names, my name is Helland, and Helling was here Tuesday.

Q. Yes, all right. Will you negotiate a salary with Leon Knight?

A. No.

Q. Will you meet and confer formally with Leon Knight?

A. No.

Q. Will you meet and confer with him on class schedules?

A. I will not, but his dean will on his class schedules.

Q. Well, I mean on a formal meet and confer basis, will his dean meet and confer with Leon Knight?

[R. 443] A. I am not sure how that operates on the campus level. My impression is that the departments meet with the dean and talk class schedules, and I am not aware that there is any differentiation between unit members—or association members or non-association members.

Q. All right, now you have said, also, that there now is very little concern, at least manifested concern, regarding what administration and teachers can do or cannot do in the way of discussion, I guess, or exchanging of views. Isn't that true because the process has evolved sufficient so that everyone seems to understand what the process is and what the system is?

A. Yes, I think so, and I should point out that the ease with which that takes place varies from campus to campus. I am speaking generally of the system.

Mr. Swenson: Nothing further.

Mr. Lindquist: Very well.

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TRIAL TESTIMONY OF JOHN FEDGE HELLING

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[R. 211] Q. Are you responsible for the supervision of the faculty?

A. Yes, I am for any operations of the college. I delegate the supervision of the faculty to the Dean of Instruction and her Associate Deans.

Q. Do you deal with the Minnesota Community College Faculty Association at all?

A. Yes.

Q. Do the other Administrators at the college deal also with the Faculty Association?

A. Well, directly they do if they are on an EOV committee.

Q. I see. How long have you been President at North Hennepin?

A. I came there on a part-time basis in the spring of 1967 and started full-time on July 1 of 1967.

Q. Is the Administration at North Hennepin Community College subject to the terms of a Collective Bargaining Agreement that exists between the Faculty Association and the State of Minnesota?

A. Yes.

Q. Now, this Collective Bargaining Agreement governs procedures and establishes procedures for faculty and administration exchange of views, isn't that correct?

A. Part of it, yes.

Q. Now, I would like to clarify just exactly your involvement in the exchange of views process. Do you get [R. 212] personally involved in that or is that something that is delegated largely to other Administrators at the college?

A. We have three Exchange of Views Committees and I serve on one for the Administration. I serve on the General EOV Committee. We have a Curriculum EOV Committee. We have a Fiscal/Personnel EOV Committee, I am not on that, but six members of the Administrative staff are on each EOV Committee.

Q. So you are on the General EOV, which is the exchange of views?

A. Exchange of views, yes.

Q. Which Administrator is on the Curriculum EOV?

A. Well, we have six Administrators on each one. I can tell you the six on the General but the main person on the Curriculum one, Dean Losoe, Dean of Instruction.

Q. Who on the Fiscal/Personnel?

A. Well, we have our Business Officer, Rick Ellison is the main person on that one.

Q. Now, are the Exchange of Views Committees essentially the so-called Meet and Confer Committees that existed apparently prior to—well, sometime in 1973, apparently, '73 and '74, is that correct?

A. That's the terminology we used then. They are the same committees.

Q. Now, does the Collective Bargaining Agreement provide [R. 213] for these Exchange of Views or Meet and Confer Committees?

A. Yes, it's specified in the contract.

Q. I want to show you what has been marked as Plaintiffs' Trial Exhibit No. 1 and ask you if that is a copy of the contract that you are referring to as the Collective Bargaining Agreement governing faculty-Administration exchange of views?

A. It is.

Q. All exchange of views that occurred between the faculty and Administration is channeled exclusively through these committees, is that correct?

A. All exchanges of views that occur between the faculty and Administration come through these committees.

Q. Yes.

A. No, I don't believe so.

Q. In what way is that not true?

A. Well, I think that the word "exchange of views", I guess we should keep it in that committee and that's the formal term; but I think that we do, upon occasion, have opportunities for some give and take on the campus, not going through the EOV Committee.

Q. Well, these Exchange of View Committees that are established by the contract are the exclusive channels for dealings between the Administration and the faculty on matters that are within the jurisdiction of [R. 214] those committees, is that correct?

A. I believe so, yes.

Q. Would it not be true that every subject appropriate for an exchange of views by the faculty and Administration will be within the jurisdiction of one of these committees that you have mentioned; the General Committee, the Curriculum Committee or the Fiscal/Personnel Committee?

A. Will you restate your question?

Q. Every subject appropriate for exchange of views between the faculty and Administration will be within the jurisdiction of one of these committees, isn't that correct?

A. We do not—there are six possible committees. We only have three on our campus and they are the three that I mentioned, General Matters of Curriculum and Fiscal/Personnel. Therefore, we do not talk about matters that fall under the

other three committees like Personnel—I forget what the other committees could be, I guess Student Services.

Q. Okay.

A. The General Matter, to clarify though, is really a casual, and I guess I should answer yes to your question because in the General Matters Committee anything could be brought up.

Q. All right. Now, these committees develop campus policies, [R. 215] recommendations for submission to—well, do they development recommendations?

A. We have not formalized the wording of the rules of the EOV Committees to say that these are recommendations. Matters are discussed at the EOV meetings but policy decisions are not made there. The matters having been discussed then are referred to the Administration because through the minutes we discuss them in the Administrative meetings and then if we feel that the policy is a good one we will adopt it or not.

Q. But the Exchange of Views Committees are designed for the members of the Faculty Association to channel the views of the Association to the committees and then to the Administration, is that correct?

A. Yes.

Q. Do the views that are developed in these Exchange of Views Committees go directly to the Administration or is there an interim unit of the Faculty Organization to which the views first go; that is to say, is there an Executive Committee or some sort of an association committee?

A. I'm really not very familiar with the process that occurs before the matters come to the EOV. That's within the Association and it's their business. I really don't know how

they channel their information up to the EOV [R. 216] Committee members.

Q. And when the views get to the EOV Committee then do they go directly to the Administration without stopping off at some interim group?

A. Yeah, when we are done with an EOV session if we have discussed let's say four topics, those topics are written up in the minutes and then we address the topics as Administrators at our next Administrative meeting. There is nothing in between there.

Q. I see. At the General Matters EOV Committee Meeting then the Administrators attend, the faculty attends, the exchange of views occur and then you go back to your Administrative position and consider the discussion?

A. Act on them or not.

Q. Yes. Now the so-called EOV, or what was once called the Meet and Confer Committees are agencies of the Minnesota Community College Faculty Association on the North Hennepin campus, is that correct?

A. That's correct.

Mr. Mueting: I'm going to object to that question as calling for a legal conclusion with regard to the term "agency." Agency has a very specific legal meaning. I think that asking him that question is making him come to some legal conclusion with regard to the relationship between [R. 217] those committees.

Mr. Lindquist: Well, why don't you ask him what the relationship is?

Mr. Swenson: Well, the question has been answered already but let me restate the question.

By Mr. Swenson:

Q. Are these EOV Committees components of the Minnesota Community College Faculty Association on your campus?

A. The membership on the EOV Committee, from the faculty, are elected by members of the Association on campus.

Q. Now, when you are referring to the Association you are referring to the College Faculty Association?

A. Yes.

Q. Now, isn't it true that by this process of the Exchange of Views Committees, the Faculty Association attempts to influence Administrative decisions?

A. Yes.

Q. And in fact isn't that really the purpose of the exchange of views structure?

A. I view it both ways. I think that it's an opportunity for the Administration to, you know, explain their points of view on things too and, consequently, get more support for their point of view. But I would certainly think that the discussions we have had with faculty, from their point of view, have been to influence the issues.

[R. 218] Q. Now, you recognize the Faculty Association as the exclusive agency that represent the views of the faculty on the North Hennepin campus, is that correct?

A. Yes.

Q. Now, it's true also, is it not, that you recognize that the Faculty Association can require you to meet and confer or enter into these Exchange of Views Committees with it regarding college policy?

A. Yes.

Q. Now, the source of that power of the Faculty Association is the Public Employee Labor Relations Act, isn't that correct?

A. Well, I think it is. That was the act passed in 1973, just to name them to form an agency?

Q. Yes.

A. Yes.

Q. Now, the first Master Contract that became effective on your campus and on all other campuses became effective in the spring of 1973, do you recall that?

A. It was concluded in April of '73. I don't believe that we started to operate under it until July 1.

Q. All right. So as of July 1 of 1973 it became effective. So I want to go to the period prior to that time. Prior to that time was the Minnesota Community College Faculty Association in a position or did you recognize [R. 219] the Association as being in a position to require you to meet and confer with it regarding college policy?

A. No.

Q. Now, presently you do not recognize any other group of the faculty other than the MCCFA as having the right to require you to meet and confer with it, isn't that correct?

A. Correct.

Q. So you do not recognize such power in any parental group, either, is that correct? That is, there is no parental group that has power under any law to require you to meet and confer or meet and exchange views between the Administration and the parental group, is that correct?

A. Yes. I'm not quite sure what you mean by the word "parental" in this instance.

Q. Well, I mean, parents of students who are at the college.

A. The average age of our students, Darel, is 28.

Q. Well, they still have parents?

A. No. I just don't think of them as younger people. I was thinking you meant the Community College Board, or something like that.

Q. All right. Let's go to the students then. Would you recognize the students as having the power to require to meet and exchange views with the Administration?

[R. 220] A. I'm really not sure on that point. We meet with them on a regular basis. And I believe that they have a Students' Bill of Rights that if they wanted to push it I believe that they could have some regular meetings or meetings with the Administration in order to influence us.

Q. Would this be true also of taxpayer groups?

A. Well, I don't believe so. There is no document that gives them that but I believe there is a Student Bill of Rights that does.

Q. The Student Bill of Rights is really a local arrangement that has been entered into?

A. No, it's a statewide or a systemwide Bill of Rights.

Q. A systemwide Bill of Rights?

A. Yes. We have never really come to that issue on campus. As I say, we do meet with the students every fifth week, the fifth Wednesday to discuss.

Q. But the issue of being required to meet with them has never come up?

A. No.

Q. And you do not recognize any right in any individual teacher to require them to meet with that teacher and exchange views, isn't that correct?

A. That's correct.

Mr. Mueting: I'm going to object to that as a [R. 221] conclusion as to the rights of individuals. We are talking about constitutional rights, statutory rights and contract rights, all of which require legal conclusions. So I ask that the answer be stricken and my objection be upheld.

Mr. Swenson: We can rephrase the question.

By Mr. Swenson:

Q. Do you recognize that any individual teacher may require you to meet and confer or exchange views with the Administration?

Mr. Mueting: Same objection. Asking the same conclusion in a different way.

Mr. Lindquist: The objection is overruled.

Q. You may answer.

A. Speaking of a teacher as an individual and not a member of the Faculty Association, no, I don't recognize where they have any power to compel me to sit and listen.

Q. And in fact you do not meet and confer or exchange views with any faculty groups other than the Exchange of Views Committees, isn't that correct?

A. Well, strictly speaking maybe not in that sort of EOV setting. However, I have on at least two occasions, and I guess more, but on two occasions have invited all members of the college community to either that breakfast we talked about or to an afternoon meeting that [R. 222] we had last winter to do really nothing more than discuss concerns—campus concerns, get their feelings about problems. There is no real agenda except a general one where they can bring up what they want. So in that sense I have tried to keep the door open for hearing what the faculty or classified staff have.

Q. But then this is something that you do as a matter of personal policy, is that correct?

A. Yes. There is no college policy that requires that. I just have felt that I have lost touch with some of the faculty and would like to be able to visit with them.

Q. You are in fact prohibited from engaging in a meet and confer process with anyone other than these Exchange of Views Committees, isn't that correct?

Mr. Mueting: I'm going to object to that as asking for legal conclusions with regard to the President's obligations and prohibitions.

Q. Well, you recognize the terms of the contract, isn't that correct? I mean, you have read the contract are?

A. Yes.

Q. And what is your understanding as to what that contract allows you to engage in a meet and confer process with persons other than the Exchange of Views Committee?

Mr. Mueting: I'm going to object to that question first as being irrelevant as to what he [R. 223] thinks the contract means. Second, it calls for a legal conclusion as to the contract terms—the very specific contract and statutory terms.

Mr. Lindquist: Why don't you ask him what his practice is.

Mr. Swenson: That's going to be my next question.

By Mr. Swenson:

Q. What's the policy of the Administration with respect to engaging in meet and confer or exchange of view processes with persons other than the Faculty Association?

A. Well, we are not supposed to do it.

Q. And do you know what the source of that prohibition is?

A. Well, the contract is our source of it. I don't know if there is other legal sources.

Q. Now, the Minnesota Community College Faculty Association is not a subunit of the Community College Board, is it?

A. Uh-uh.

Q. This Association is not a component of the State government like the Board is a component of the State government, is that correct?

A. That's correct.

Q. In fact, the MCCFA is entirely an independent agency outside of the Minnesota Community College Board, is that correct?

[R. 224] A. That certainly, as far as my understanding of it is.

Q. In fact, are there not real conflicts of interest between the Faculty Association and the Administration from time to time?

Mr. Mueting: I'm going to object as first being irrelevant; second, calling for a conclusion as to what a conflict of interest is.

Mr. Lindquist: Yes, I sustain the objection. When you talk about conflict of interest you get into an area that covers so many possibilities that I don't know if it would be relevant at all to our discussion here or our issues.

Q. Now, do you recognize or it is your policy that you cannot recognize any other teacher organizations during the term of this Collective Bargaining Agreement?

A. Well, we don't have a policy written like that for that portion of our handbook. We incorporate the Master Contract and live by that. But what you are getting at is we don't sit down formally and recognize another group, that's true, we do not.

Mr. Lindquist: Aren't many of these matters covered in your Stipulation of Facts?

Mr. Swenson: I'm not aware that that's true, Your Honor.

Mr. Lindquist: Oh, really?

[R. 225] Mr. Swenson: I don't believe that's true.

Mr. Mueting: Our Stipulation includes provisions of the contract that pertain to the recognition of the Union. I think some of those types of conclusions are self-evident after reading those portions of our Stipulations.

Mr. Swenson: All right.

By Mr. Swenson:

Q. You recognize that the Plaintiff, Leon Knight, is not a member of the MCCFA, is that correct? Do you recognize that?

A. Leon has told me that he is not. I don't pay much attention to who joins and who doesn't join.

Q. Now, if it were possible for Leon Knight to confer with you individually on subjects that are normally covered by the Exchange of Views Committee, his conferring with you would not in any way impede his performance as a teacher, or impair his performance as a teacher on the college campus?

Mr. Mueting: I'm going to object to that as calling for a hypothetical and for a conclusion which is probably beyond the scope of this witness's personal knowledge.

Mr. Lindquist: What are you trying to prove?

Mr. Swenson: We are trying to establish [R. 226] whether or not there is any basis in Mr. Knight not being able to speak directly with the Administration at the college based upon the possibility that if he were to do that that that might somehow impair or undermine his teaching performance. The question is whether or not we may restrict the speech that Mr. Knight might engaged in on the grounds that a failure to—or on the basis that is justified by avoiding Mr. Knight not performing his job properly, that's all. The question is whether there is some college objective here to be achieved by silencing Mr. Knight.

Mr. Lindquist: I will let you go ahead with the background information.

By Mr. Swenson:

Q. All right. So would Mr. Knight's conferring with you in any way impair or impede his ability as a teacher, his performance as a teacher?

A. I don't know if it would trouble him at all. I don't believe that the Administration would do anything as a result of the conversation we had with Leon to jeopardize his teaching or injure his ability to teach.

Q. Would his conferring directly with you interfere with the college's Administrative discipline of it employees [R. 227] at all?

A. No. Leon and I talk occasionally about a number of things and it doesn't interfere with our organization.

Q. And it wouldn't interfere with the operation of the college generally either, would it?

A. No.

[R. 228] Q. (by Mr. Swenson continuing) Is there any way in which it would create a situation adverse to the administration of the college?

A. Well, we do have our first obligation to any policy change to see that it goes through an EOV process. Now, we can, as administrators or the president, make a final decision, but it can't be made without having been exposed to EOV, I don't think. It might create some bit of a conflict in the decision-making process if we were to listen to all five, but that's —as much as we can do, we try to do that.

Q. And the reason why it would create that conflict or the problem that you alluded to is simply that Leon Knight is not a member of the MCCFA, isn't that correct?

A. Well, he might have a different point of view. I hadn't thought about it as his, you know, not being a member of the MCCFA. It hasn't been a problem yet, that nobody has grieved that or said that we have talked with people when we shouldn't have or anything. I meant it would be possible that we would have a variety of influences on the decision-making process and create some conflict that way.

Q. I see.

Mr. Swenson: We have no further questions.

Mr. Mueting: I would like to ask Dr. Helling [R. 229] a few questions.

CROSS-EXAMINATION

By Mr. Mueting:

Q. How would you describe your relationship with faculty members generally on your campus?

A. Well, I think—I feel that it's congenial on a person-to-person basis.

Q. Do you do anything to maintain that congeniality?

A. Yes, I try to.

Q. Could you describe what those things are that you do?

A. Well, we organized a softball team and played all Sunday afternoon at a tournament out there at Brooklyn Park—and won. But it's kind of an example of how I think it's important to interact with faculty. We had members on the team. But in terms of other more formal things, we try—I try to at least from time to time have the opportunities when faculty can discuss matters in a form setting.

Q. What form is that?

A. Well, I have, since the strike we have had at least two times when I have just really invited faculty to come and either have coffee and donuts or breakfast and express their concerns. As Morgan mentioned, at the beginning of each academic year we have a day devoted to really bringing those things together, orienting faculty, dicussing problems.

[R. 230] Q. When you have had these breakfast get togethers, do faculty respond to your invitation?

A. Well, it seems—when we had the breakfast we had a much better turn out than when we had just black coffee and donuts in the afternoon, but I think we had a very good turn out from all staff.

Q. What types of things are discussed at these meetings?

A. Well, they are really quite informal. I remember one time when the AV department was somewhat maligned because they weren't getting the projectors out and operating on time, and it was kind of an interesting discussion going on across the room (indicating). I tried to stay out of it. But it was the sort of thing that has to do with the operation or housekeeping of the college.

Q. Do you set any limits as to what can be discussed at these meetings?

A. Well, no, there were no parameters on it.

Q. In your personal administration of the college do you maintain an open-door policy with regard to staff members?

A. Yes, I do.

Q. And as a result of that policy or taking advantage of that policy have people come to talk to you at various times, either by appointment or without an appointment?

A. Yes.

Q. Are these people faculty members at North Hennepin?

[R. 231] A. All kinds, faculty members, classified people, students.

Q. Have you ever advised any person who has asked to speak with you that they are not permitted to speak on any particular subject?

A. Not to my recollection, I have not. I think at the very beginning when the contract first became operable we might have kidded about that occasionally.

Q. In practice have you ever limited anyone's access to you to discuss matters relating to the college or anything else?

A. No, no, I don't believe I have. No, I have not.

Q. Is Leon Knight one of the individuals who has met with you on these occasions?

A. Yeah.

Q. Have you met with Leon Knight more than once?

A. Over—since the contract?

Q. Since 1973.

A. Sure, many—

Q. How often would you say?

A. —many times.

Q. Do you ever make distinctions with regard to faculty members based on their affiliation or nonaffiliation with the exclusive representative, that is the MCCFA?

A. Only when they are asking in their formal capacity.

Q. Would you explain what you mean by that?

A. Well, the association has the grievance representative. [R. 232] I treat that particular faculty member as a grievance representative during those times when they are grieving. The president of the association and I, you know, have certain obligations that we have to perform together. As a faculty member, I treat them as an association member at that time.

Q. Do you know at any given time which faculty members are members of the MCCFA and which faculty members are not?

A. No, I really don't. I, you know, there are some that you are bound to note that they are members because they belong to the executive committee or council, but, you know, across the board, no.

Q. Prior to 1973 you were a president of the college, is that correct?

A. That's correct.

Q. Are you familiar with the faculty senate operation that was in existence at that time?

A. Yes.

Q. Did the faculty senate ever have responsibility or authority to make any final decision concerning college policy?

A. No.

Q. Who had that authority?

A. On our campus I did.

Q. And you were the president at that time?

[R. 233] A. Yes.

Q. Do you still have the authority to make those final decisions?

A. Yes.

Q. In making those final decisions are you bound in anyway by the faculty association's Exchange of View Committee recommendation?

A. Not technically, but the wording of the contract is such that you really are under stress to pay a great deal of attention to the EOV Committee actions or discussions. Really, I think the word is listen and act in good faith, and so—

Q. Do you listen only to persons on the Exchange of View Committee before making policy decisions?

A. No.

Q. I believe you made a statement towards the end of your Direct Examination that you try to listen to all sides. Was that with regard to the type of policy you have concerning your decision-making process?

A. Yes.

Mr. Mueting: I have no further questions.

CROSS-EXAMINATION

By Mr. Miller:

Q. Dr. Helling, I have only a few questions. You indicated in response to a question from Mr. Mueting, I believe, [R. 234] that you personally have not instructed or informed any

faculty that they could not discuss certain subjects with you, do you recall that testimony of yours?

A. Yes.

Q. A question related to that. Have you ever taken any steps to inform any of your administration that they should not discuss any list of subjects with faculty members?

A. Yes.

Q. What subjects have you so instructed your administrators about?

A. We had a statewide work shop shortly after the original contract was drafted, and we were instructed as a group of administrators by the Board office staff that we were not to, you know, formally discuss matters relating to—well, policy in terms of curriculum, fiscal affairs, facilities, that sort of thing with other than the correct representative. After that workshop we went back to North Hennepin and reviewed the contract and did essentially the same thing. So in trying to answer your question, we did it both on a statewide level and then on a local level.

Q. Is it fair to say that the restriction you just described is that you are not to engage in meet and negotiate about terms and conditions of employment with any other group than the MCCFA?

[R. 235] A. Well, that's true, possibly at the system level, but on each individual campus, there is no negotiation.

Q. I understand. Do you distinguish between the meet and negotiate and meet and confer processes?

A. Yes.

Q. And it's your testimony that in terms of listening to faculty members about policy decisions of the North Hennepin Community College that you do maintain an open door and are

willing to listen to all sides before making a decision on policy matters?

A. Yes, I try to do that.

Q. Dr. Helling, has any representative of the MCCFA ever told you that you should not follow that practice with respect to receiving input from all sides on policy issues at the college?

A. Yes.

Q. In what way were you so informed?

A. We sent out a questionnaire when we were doing our self study to faculty and tried to get their reflections on ways in which we were operating that could be improved, and a couple of the responses we got were that—they were very critical to the administration because we listened to the scabs.

Q. That was in regard to the strike that was conducted—in what year was that strike conducted?

[R. 236] A. I believe it was in the spring of 1979.

Q. Thank you. Is it fair to say that you have disregarded those critical comments in that you have continued your open-door policy on receiving input on policy issues from all faculty members?

A. Well, yes, I have, but I have never—other than in a group setting—taken the initiative in soliciting faculty opinion. Like I won't go to Morgan and ask him. It's true Morgan has never come to me, either. And I believe most of the faculty who are not members have not done this, except in this open forum setting, whether it's in the beginning of the year or one where I have invited.

Q. You have not discouraged them from coming to you?

A. No.

Q. Leon Knight as an individual has come to you over a period of years since 1973 to discuss various campus policy issues?

A. No. I would not want to say—what Leon and I have discussed, it ranges all the way from his personal life to his poetry to ideas that he has that may have effect on the college.

Q. Okay.

A. That's true.

Q. So that they could impact or deal with policy issues?

A. Well, it's very hard not to. I think you really wouldn't say very much to anyone that wouldn't have some relationship [R. 237] in the long run to some policy.

Q. One small item, Dr. Helling. During your responses to Mr. Swenson's questions you indicated that you would not recognize any other faculty group. My question to you is was your response to that question recognized in terms of attempting to meet and negotiate terms and conditions of employment? Is that the kind of recognition that you had in mind?

A. Yes, the formal type of recognition.

Mr. Miller: Thank you, I have no other questions.

REDIRECT EXAMINATION

By Mr. Swenson:

Q. Mr. Helling, would you explain or identify that Board office meeting or staff that you attended in which you were instructed that there were certain topics that you should not discuss with certain faculty people?

A. I believe we have had a couple like that. I just don't recall if—where the first one was held. I can't remember which college it was held at. We had one at Inver Hills, but it was the chancellor, the fellow who had been on the negotiating team from the State—

Q. From the State Negotiator's office?

A. Yes. I can't recall his name right now, but I will in a minute. Other people from the Board office that—

Q. Charles Swanson (phonetic)?

[R. 238] A. No, this was before Charlie.

Q. All right. Well, anyway, would you go ahead and explain further the—

A. Well, it was a meeting to go through the completed contract. None of us had ever administered—well, I had in business worked with unions before, but we had never administered under a contract situation before, so it was really a workshop to talk to us about the implications, the rules laid down, the procedures laid down in the contract, the implications, and how we should handle it.

Q. But it was a meeting, a workshop that was organized and sponsored by the Community College Board, is that correct?

A. The chancellor's office, yes.

Q. Was there any printed material distributed at that time, a workbook or handbook of some sort?

A. I don't recall that. We all got copies of the completed contract at that time, I'm sure.

Q. The Board that we are talking about here, the exact name of the Board is what?

A. The State Board for Community Colleges.

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TRIAL TESTIMONY OF
DALE A. LORENZ
pp. 981-1002

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[R. 981] Q. Now, in 1973 the community college system negotiated a Master Contract with the Minnesota Community College Faculty Association, is that correct?

A. That's correct.

Q. Now, at the present time under that Master Contract, are you required to exchange views with the Minnesota Community College Faculty Association?

A. We're required to exchange views with the Faculty Association, yes.

Q. Could you briefly describe how that works?

[R. 982] A. On the local campus?

Q. Yes. You have certain committees on your campus out at Normandale.

A. At Normandale we have three committees. Three exchange views committees: General Matters Committee, Personnel Committee, and the Curriculum Committee.

Q. And who's on those committees?

A. We have the faculty—the local chapter of the Faculty Association appoints faculty members and I appoint Administrators on those committees.

Q. Are only association members—and by that I mean Minnesota Community College Faculty Association—are they the only ones now serving on the Exchange of Views Committees?

A. I do not know. The Association makes that decision.

Q. Are you on any of the Exchange of Views Committees?

A. I serve on two of the committees.

Q. Which ones are those?

A. Personnel and General Matters.

Q. Have you ever had an instance occur during any Exchange of Views session where an individual, other than a Minnesota Community College Faculty Association member, tried to give his views?

A. I very frankly do not know which faculty members are members and which faculty members are not members.

[R. 983] Q. Assume the following facts, then, based on your experience as President and also serving on the committees, assume that a person who is not on the Exchange of View Committee was present in the room and tried to present his views. Would he be permitted to present his views?

A. We have within the college a procedure for exchange of views, as we call it, and we have the provision for special witnesses. Prior to each meeting the Chairperson of the faculty and the Chairperson of the Administration can agree on such witnesses. The meetings are totally open so any faculty member may attend the meetings and not speak. But, only special witnesses may speak. So, it takes the agreement between the Chairpersons—faculty and chairperson of the Administration on special witnesses.

Q. So, either side could block a special witness appearing?

A. That is correct.

Q. Has that ever happened on a committee that you've been on or you were aware of or remember?

A. On any committee? It has never happened that I ever served. I'd be very surprised if it happened on the Curriculum Committee.

Q. You don't serve on that committee?

A. I attend, but I don't serve on that committee.

Q. Under the present setup, that's since 1973, you can't [R. 984] meet, negotiate with the individual faculty member? You can't meet and negotiate the terms and conditions of employment. Who is the official spokesman on campus for the faculty?

A. On campus the President of the local Faculty Association chapter.

Q. He is the official spokesman?

A. Yes.

Q. Do you take a minority or a dissenting viewpoint? Do you have any provisions for that?

A. One of the reasons—are you referring to the exchange of views?

Q. Anything. Exchange of views.

A. That's one of the reasons we have the special witness provision at the college. And indeed so that people may come to the meeting and express either pro positions or anti positions. So, an individual could come and ask to be a special witness and if accepted could present any position on the issues being considered.

Q. Could present the position. But, what if the position—assume that he presents a position that you can't really talk about under the Master Contract.

A. Now you're talking about negotiations?

Q. Well, meet, confer and any terms of conditions of employment and so on and so forth.

[R. 985] A. We do not on the local campus have any authority to negotiate. Negotiations are handled through the System Office in St. Paul. I'm not sure if I understand the question.

Q. When you have the exchange of views, what are you doing there? Are you filling in the gaps of what is not covered in the Master Agreement?

A. To some extent that would be true. But, to a major extent, we exchange views on matters that pertain to the Administration and the operation of the college.

[R. 986] A. (continuing) To a great extent that would include educational matters.

Q. Can you promulgate without an Exchange of Views session as president?

A. In a restrictive sense, yes.

Q. But on a lot of matters you have to go through the Exchange of Views session for a rule?

A. We have such definite practices that I have a difficult time sometimes determining what's reasonable and what's practice. To a great extent in practice we try to exchange views on any matter. But, legally, I'm not sure.

Q. Prior to 1973, prior to the masters agreement, as an administrator you didn't have to go through the same setup that you do now, is that right? In other words, did you have these formal Exchange of Views committees setup?

A. We did not call them that. But, we had an internal government structure where we did, indeed, discuss issues before decisions were made.

Q. What was that internal government structure? Now, we are talking about pre 1973.

A. At Normandale we had what was referred to as a general faculty assembly. All full-time faculty members were members of the assembly along with all the administrators who were members of the assembly. So, the entire faculty and the entire administration would get together.

[R. 987] Q. How was that changed since the Masters Agreement?

A. Since the agreement there is a restriction in the contract on the number of individuals that can be on the Exchange of Views Committee.

(At this time a short recess was taken.)

By Mr. Fogarty:

Q. Mr. Lorenz, you were just going to explain the differences between the faculty governing setup that the Normandale pre 1973 and when the Masters Contract came in. Or, how it is today. What is that basic difference?

A. I mentioned that all the faculty members were members of the assembly, including all administrators. We had a committee structure. I served as the chairperson of that assembly. And then the recommendations that came out of the assembly—and this was operating by Roberts Rules which means there was, indeed, voting of all the faculty members and all the administrators would vote on the issues, make motions, vote on the issues. And then there would be recommendations to me and then I would make the decision on institutional position changes.

Q. And you were talking about pre 1973, right?

A. That's right.

Q. Okay. Therefore, anybody in the faculty or administration could get up and make a motion?

A. That's correct.

[R. 988] Q. There was no veto power? In other words, two people couldn't agree that this person could not speak at the faculty meeting?

A. That's correct.

Q. But, in today's setup, for someone who is not on the committee to get up and speak, there has to be an agreement between the administration and the representative from the committee, is that right?

A. That's right.

Q. So, in effect either the administrator or the other committee can block them today?

A. That's correct.

Q. So, that's a major difference, isn't it, as to how it used to be?

A. That is a significant difference.

Q. Significant difference. When the Masters Contract first came into effect, I believe there were some workshops conducted, do you recall that?

A. Yes.

Q. Briefly, what—how were those handled?

A. You are going to tax me now because that's a long time ago. I don't remember the sequence. We did—the administrators would meet with Mr. Helland and members of his staff. And we always had at least one joint meeting with the administrator and representatives of the faculty association on [R. 989] a statewide basis to discuss the provisions of the contract.

Q. Were those open meetings?

A. I was referring to statewide meetings. In addition to that we would have local meetings.

Q. Local meetings where you met with your people or where somebody from the state came down and met with your people? The administrative people.

A. Both.

Q. Both setups. Has that happened every time a new contract has come in?

A. No. You are referring to local meetings, now?

Q. Yes.

A. That has not happened after the last current contract.

Q. The current contract. If you need an interpretation of the contract, where do you go? Who do you contact?

A. I go to one of two people. Either the Chancellor or the Director of Personnel in the System Office.

Q. And do they—is that a formal type of communication or is it just a telephone call?

A. Not necessarily. Maybe just a telephone call.

Q. Does that happen frequently or occasionally or—

A. Initially frequently. Now, occasionally.

Q. The administration itself considers the association—I've already stated this, but I will state it again—the formal spokesman for the entire faculty?

[R. 990] A. By contract they are exclusive representatives of the faculty.

Q. Therefore, they are the spokesman of the official faculty position?

A. If I understand your question, the answer would be "Yes".

Q. Well, if you say, "I want to know the faculty's position on action X." Then the word of mouth coming from the Minnesota Community College Faculty Association, whatever you hear from them, is the official position? Their official—the faculty's official position on action X?

A. Yes.

Mr. Fogarty: I have no further questions.

[R. 991] CROSS EXAMINATION

By Mr. Mueting:

Q. President Lorenz, have you ever met and negotiated individually with any faculty member concerning their terms and conditions of employment either before 1973 or after 1973?

A. Mr. Mueting, I have a little question with the word "negotiate". Certainly prior to 1973 the answer would be "Yes". But, we do make a distinction between—the word negotiate as I understand is exclusively the province of the Systems Office with the faculty. We exchange views.

Q. Prior to 1973 what would be the conditions under which you would meet and negotiate terms of employment with individual faculty members?

A. We had a tenure system. Reappointment system. They could clearly talk with individuals about whether or not they should be reappointed and whether or not they should be granted tenure. And that was done on an individual basis.

Q. So, when you're referring to terms and conditions of employment, you are still actually referring to the employment decision itself?

A. In that case, yes.

Q. In your present Exchange of Views situation, who can [R. 992] be a special witness?

A. Any faculty member. Any Administrator. A question has recently arisen on whether or not students can be special witnesses in the Faculty Association—in the exchange of views sessions. Prior to a couple of years ago they could be. Now, there's a real question on that. In practice what happens is that sometimes they are and sometimes they are not. But, clearly faculty and Administration are.

Q. So, any faculty member at Normandale Community College is eligible as a special witness in an Exchange of Views process at Normandale, is that correct?

A. That's correct.

Q. Is there any requirement that that person hold membership in the Faculty Association?

A. No.

Q. Has any faculty member requested to appear as a special witness in exchange of views and been denied that opportunity by either party?

A. Not that I recall.

Q. At least on the committees in which you served that's never happened, is that correct?

A. That's correct.

Q. Is the exchange of views process the only process in which you obtain information from faculty concerning the [R. 993] matters relating to the college?

A. No.

Q. How else do you obtain such information?

A. Clearly through the Administrative structure.

Q. Could you explain what you mean by that?

A. Well, we have three divisions. We have the Division of Instructional Services, Student Services and Institutional Services. Then we have a typical Administrative structure under those divisions and individuals are supervised and work —they work through these, the Administrative structure on a daily basis.

Q. So, information that is received comes to you through the Administrative structure from the faculty members, is that correct?

A. Faculty members work through Administrators generally. It certainly is possible for a faculty member to talk with me as an individual.

Q. Does that happen?

A. On occasion.

Q. Do you have any regularly scheduled forum or meeting with faculty members or other staff members at Normandale outside of the normal exchange of views process?

A. We have what's called President's lunches. Once a month I meet with the randomly selected group of students. [R. 994] The following month with classified staff. The following month with faculty. Those are open meetings not on the agenda but any individual can discuss anything that they would like to discuss at those meetings. This is part of our communications structure.

Q. Who selects the faculty members who will show up at these lunches?

A. These faculty members are selected by the Director of the College Center on a random basis and she retains those records.

Q. As far as you know is membership in the Faculty Association a prerequisite to a faculty member receiving an invitation to attend the President's luncheon?

A. Clearly it is not because the Director of the College Center does not know, I'm quite certain, which members are and which members are not members of the Union.

Q. In your dealing with faculty members, especially with regard to communications with faculty members, do you make distinctions between Association members—Faculty Association members that is—and nonmembers?

A. I do not know which faculty members are members and which are not. I do—I'm not aware of that in any systematic way. I do, however, become knowledgeable that some individuals are members. May I expand on that? We have what we call the general faculty meetings once a [R. 995] quarter. We have an Administrative-called general faculty meeting and those are primarily reporting sessions. Individual Administrators and faculty members participate in those sessions. This again is part of our communications structure.

Q. What is your practice with regard to meeting with individual instructors who may wish to meet with you?

A. I meet with them.

Q. Have you ever refused to meet with the faculty member who's wished—requested a meeting with you?

A. I don't recall ever—obviously there would be times when I couldn't meet at the present time. But, we could set up another appointment.

Q. Are you familiar with the Plaintiffs in this case? The ones that are—

A. Plaintiffs from Normandale?

Q. Yes.

A. I'm familiar with the names of three.

Q. What are the three names that you—

A. Terrence Florin. James Wallace. Gary Nelson.

Q. Are you familiar with a Mr. Lievense?

A. Yes.

Q. Have you ever met privately with him?

A. Yes, I just did a few minutes ago, in fact.

Q. Prior to just a few minutes ago had you met with him?

[R. 996] A. Yes.

Q. And have you ever advised any Plaintiff in this case or any faculty member that they cannot discuss with you any matter that they wish to discuss?

A. No. The answer would be no. However, once we get into a discussion I may say it's more appropriately discussed in another forum. But, I wouldn't even know how to keep people from discussing something that they would want to discuss.

Q. Have you ever advised any of your administrators that they cannot meet with faculty members to discuss matters which the faculty member might wish to discuss?

A. No. However, there we do have clearly a structure and an understanding of where particular issues are discussed. I mean, I'm not sure that I'm giving the right impression. We don't discuss every matter at the college on an individual basis. Anyone that wants to come in and discuss this—I think it's a fairly good understanding of where particular items and issues are discussed. But, clearly I have never given any advice to an Administrator not to discuss an issue of importance to a faculty member. But, I do know that they might refer them to an appropriate place and it will be discussed within that place before a decision is made.

[R. 997] Q. Was there some confusion after the initial master contract was signed in 1973 with regard to who could speak to who about what?

A. Very much so.

Q. Could you explain that confusion?

A. We had both government structure and administrative structure that was not particularly compatible with the structure that came through the contract and also considerable confusion on what terms meant. And did it mean that when you exchanged views you could only discuss items in exchange of views sessions. Did it mean that when one member of the unit could not supervise people of the unit that they couldn't work with them on cooperative basis. So there was considerable confusion at that time and it had a real impact on the operation to come.

Q. Has there been in your impression and based on your experience has there been a lessening of that confusion from '73 to present?

A. Yes.

Q. Have the informal channels of communication been open to faculty members more so in the later years than in the years directly following the signing of the first master contract?

A. Yes.

[R. 998] Q. I've got one more question and getting back to the area of special witness. Are there some restrictions on what a special witness might say at an exchange of views process or subject on which that special witness might address?

A. No.

Mr. Mueting: I have no further questions.

Mr. Goodwin: No questions.

REDIRECT EXAMINATION

By Mr. Fogarty:

Q. Mr. Lorenz, at an exchange of views session you have representatives from the faculty and the administration, right?

A. Yes.

Q. You have faculty members, administration members, they make up the body of the committee?

A. In the present structure, that's correct.

Q. In the present structure now if anybody from the faculty side wants to get up and speak he can speak, can he?

A. If accepted by the special witness.

Q. If they have been accepted as a special witness. How about members of the committee?

A. I'm sorry, any member of the committee.

Q. I'm talking about members of the committee.

A. Certainly.

[R. 999] Q. Faculty association members can get up and speak?

A. That's right.

Q. On the other side administration members can get up and speak as well?

A. Okay.

Q. Is that right?

A. We do have some structure in terms of sharing, recognizing that type of thing.

Q. Other than the rules of order?

A. Okay.

Q. But as to the special witnesses, everyone could be a special witness, everybody in the faculty has the possibility of being a special witness, is that right?

A. That is correct.

Q. And on the other hand the committee also has the power or at least one side of that committee has the power to make sure nobody from the faculty other than the people that are on that committee and those appear as a special witness, is that right?

A. That's correct.

Q. When you said exchange of views, when people, when faculty members come in and talk to you, and obviously you're not going to show them out and say get out, but you brought this up yourself, you may say there is a more appropriate form. In other words, discuss it, you will [R. 1000] listen to them certainly and your response may be there is a more appropriate form for this, is that right?

A. That is correct.

Q. From their point of view at least the discussion may not be meaningful because you cannot afford them the remedy they are looking for, is that correct? In other words, they'll have to go to the form that the problem form?

A. I think I can answer, yes, to that if I understand. Certainly I can come up with these, very true.

Q. Giving you an example, if a person comes in today and says, "I want to discuss tenure with you," you could do that prior to 1973, couldn't you?

A. May I say we do not have tenure.

Q. I realize that, now that you don't have it you can't discuss it.

A. That's right. I can say you're instantly tenured.

Q. Or on the other hand tenure in the traditional sense is no longer existant.

A. That's right.

Mr. Fogarty: I have no further questions.

Mr. Mueting: Just a couple questions in response to a question concerning exchange of views.

RECROSS EXAMINATION

By Mr. Mueting:

[R. 1001] Q. I believe there was a situation that only members of the faculty association may speak at an exchange of views, is that correct, only faculty association may speak on an exchange of views of were you referring to members of the formal exchange of views committee?

A. Would you repeat that question.

Q. There was a reference in a question by Mr. Fogarty concerning exchange of views committee. I believe he indicated that faculty association people were the only ones entitled to speak by right. Is it your understanding that only members of the committee, exchange of views committee, be they faculty or nonfaculty association, are the ones entitled under the contract to speak at those exchange of views committees?

A. Mr. Mueting, under the contract there is a limited number of faculty members and administrators who can be on the committee. The contract itself does not speak to other people coming in and providing input. An exchange of views session at Normandale is for people to come in and provide input to the faculty members and administrators who serve as exchange of views members.

Mr. Lindquist: I understood, Mr. Mueting, that they were speaking about members of the [R. 1002] committee.

Mr. Mueting: Okay, fine.

By Mr. Mueting:

Q. Is it your practice to ignore faculty members points of view or statements to you if they are not expressed to you in the proper form?

A. No.

Mr. Mueting: No further questions.

Mr. Lindquist: Very well, Dr., thank you.

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[R. 59] Q. When you were at Willmar Community College how did you communicate, if at all, with the Administration?

A. We had general faculty meetings regularly at which discussions would take place and votes taken. We had various committees in which people who were elected by the faculty would debate and come to a position on the issues.

Q. Who would call these meetings?

A. Whoever the Chair of the Committee was.

Q. Well, who would call the faculty meetings?

A. The general faculty meetings were called by the President of the college.

Q. What was the purpose of these faculty meetings as far as you recall?

A. To discuss college policies, to establish academic standards, final academic standards, to determine degree requirements; the typical decisions that the academic faculty would make at a college.

Q. What were the topics that were taken up by committees that you were on?

A. Well, the Curriculum Committee would be the first sounding board for curriculum decisions. The Student Affairs Committee would be the first sounding board for decisions on what activities. The budget for the [R. 60] students activities.

[R. 61] Q. (by Mr. Swenson continuing) Did your English Department have a representative on each of these committees, or how did that work?

A. I don't recall whether each department was represented or whether we were elected from the school as a whole. I don't recall that.

Q. But there was representation?

A. Yeah.

Q. There was a representation system of some sort?

A. Yes.

Q. Was an opportunity to be elected to those committees open or closed?

A. No, it was open.

Q. By open, I mean it was open to anyone, is that the way it was?

A. Everyone on the faculty was eligible.

Q. Okay. And is this the avenue that you used to communicate department viewpoints to the administration?

A. Yes.

Q. Did you have the opportunity to get, as an individual teacher, to the administration and deal with them individually?

A. Yes.

Q. Was all of this communication activity that we are trying to describe necessary for some particular purpose?

[R. 62] A. Well, yes, I think so.

Q. What was the need?

A. I think it's very important at a college for there to be different forums where the individual faculty members can express opinions and have some input into the decisions that are being made in terms of the academic standards, degree requirements, curriculum, and so on.

Q. Why is this important to you as a college instructor?

A. I think it's important as a professional instructor that I have some say in terms of the structure of the system of my profession. I think it's important.

Q. Well, what does it do for your profession to be able to have this communication?

A. It helps give me a broader view in terms of the functioning and activities of the entire college, the entire institution. It helps me have some say on terms of what the instructor and requirements for the entire institution would be.

Q. All right. What are some of the issues that you needed to have an opportunity to talk about to the administration?

A. I needed to have some say in terms of what the requirements would be in order for a student to get a degree from my college. I needed to have a say in what the grading standards would be in terms of whether a student was a student in good standing or whether it—being flunked out [R. 63] of school, an honor student and so on. I needed some say in terms of the various curriculum programs even outside my own division for balance for the entire college.

Q. Now, let's move on to North Hennepin Community College for a moment. Why did you move from Willmar to North Hennepin?

A. North Hennepin was a new college. It was—it provided me an opportunity to get in on the ground floor of a new institution, and that's always exciting. The President of Willmar Community College was moving to be the first President at North Hennepin Community College and he specifically asked me if I would go with him and I said, "yes."

Q. Who was that President?

A. Dale Lorenz.

Q. Did you start working at North Hennepin, then, in September of 1966?

A. Yes.

Q. Where is North Hennepin located?

A. It's located in Brooklyn Park.

Q. Has it always been there?

A. No, the first few years was in Osseo in a temporary building.

Q. Did you have any involvement with teacher organizations when you—or as of September of 1966?

[R. 64] A. Yes, we established a chapter of the Minnesota Community College—or at that time Minnesota State Junior College Faculty Association at North Hennepin very quickly after the opening of school.

Q. All right. Could you describe what you did or what the process was in establishing this organization?

A. There were two of us who had been members of the Association before at other Minnesota Community Colleges, Neal Sands (phonetic) and I, and we took the lead, told the other people on the staff about the faculty association, and generally encouraged their memberships, and a number of people joined.

Q. Did you create any formal structure as between the teachers and the administration?

A. Yes. Another thing that we did is the first day that North Hennepin was in session, we adopted the Willmar Faculty—or the Willmar College Constitution as an interim constitution for the College until we could write our own college constitution. So we adopted the Willmar Faculty Constitution.

Q. Now, you say you did this on the first day of that school year?

A. Yes.

Q. Was there some urgency for doing it right away?

A. As far as I was concerned, there was some urgency, yes.

[R. 65] Q. What was that?

A. At any new institution there is always tensions and—well, tensions, and just the establishing the relationships and the structure of the institution. There were two colleges that had been formed, Anoka-Ramsey and what is now known as Minneapolis Community College, and some of the tensions that were present at those particular colleges, I thought, could be avoided if the College—if North Hennepin College started off with a general faculty constitution that would essentially define the relationship immediately between the administration and the faculty members.

Q. What definition was given to that relationship?

A. We established, for example, Academic Standards Committee, Curriculum Committee, the different divisions within the college, things of that nature.

Q. What was the purpose of these committees in the structure?

A. So that the faculty and the administration would know right from the very beginning how to go about making curriculum proposals, establishing academic standards, to give a structure where there would be structural forums within which individual faculty members could have a say, that they could be confident would be heard, and I think it was successful.

Q. Was your objective to give this opportunity, this forum opportunity, to all faculty members?

[R. 66] A. Yes.

Q. I mean, were there any faculty members who were for some reason excluded from this forum situation?

A. No, no.

Q. Was there any reason why you did not try to exclude anybody?

A. It just never ever occurred to us that anybody should be excluded.

Q. Well, is there some reason why everybody should be included?

A. Yes, just the nature of a college, that all of the faculty and staff members should be included in the forums where decisions are made.

Q. Now, in this structure that you developed in 1966, was there a division chairman arrangement or department chairman arrangement created?

A. In the first year there were only one—that was the English division—because as a first-year college we knew that virtually all of our students would be freshmen and the freshman English requirement is a big one in a community college so we only had one division named as such at the beginning of the year. During that first academic year, then, other divisions were named and defined during that first year.

Q. All right. Were you chairman of the English Department?

A. Yes.

[R. 67] Q. What were your duties as chairman of the English Department?

A. My primary duty was to recommend to the administration people to be hired that would be added to the English staff. Now, that was the first duty that I had. And then we also had—I also had the requirement as Division Chairman to take the lead amongst the new English instructors in deciding what the English curriculum should be.

Q. Now, you might address this answer as well as the remainder of your answers to the Special Master on the question of whether your duties involved teacher evaluation?

A. Yes, to a certain extent. The evaluation was essentially voluntary, that no—every instructor would be evaluated, but no instructor would have to be evaluated by me if he thought that I would discriminate against him in that evaluation. So each English instructor could say, "In my evaluation, I would prefer that Mr. Knight not be part of my evaluation team."

Q. How many members of a department made up an evaluation team?

A. It took a couple years for the thing to settle down, but as I recall it, that each instructor could select a three-person committee to do the primary evaluation.

Q. What was the object of the evaluation effort?

[R. 68] A. To make sure that the person could function effectively as a permanent employee within the structure and programs at North Hennepin College.

Q. Would a favorable evaluation ultimately lead to tenure status?

A. Yes.

Q. Is that tenure arrangement still in effect at North Hennepin?

A. No.

Q. Do you know when the tenure arrangement ceased?

A. When the first master contract—I think it was in 1973—was published, all mention of tenure had been eliminated.

Q. Okay. Now, did the English Department have a representative on any other organizations on the campus, that is to say was there a faculty senate?

A. Not the first year. After a couple of years, I forget the exact date, the faculty senate was established and we did have an English representative on the faculty senate.

Q. Okay. Now, who was eligible in the English Department to be a representative to the faculty senate?

A. Anyone.

Q. Did the person have to be a member of the teacher organization?

A. No.

Q. Was the teacher organization called the Minnesota Community [R. 69] College Faculty Association in 1973—I'm sorry, in 1966, I guess it would have been.

A. It was Minnesota State Junior College Faculty Association, but it's the predecessor to the Community College, just a change in the name.

Q. When did the change in name occur?

A. I don't recall now. I don't recall.

Q. You don't even have an approximation?

A. I'm sorry.

Q. All right. Now, was there any restriction on who could become a member of the Junior College Faculty Association?

A. No.

Q. I mean, other than I suppose you had to be a member in the—a teacher in one of the colleges?

A. Yeah.

Q. But was there any restriction other than that?

A. No.

Q. Was membership in the Association voluntary?

A. Yes.

Q. Did you have Association dues?

A. Yes.

Q. Were all faculty in the Community Colleges required to pay money to—dues or money to the Association?

A. No.

Q. Okay. Where would the Association gets its financial [R. 70] resources?

A. From the membership fees of the voluntary members.

Q. I see. There was no fair-share fee or anything like that?

A. No.

Q. Now, do you still have the division chairman concept at North Hennepin?

A. No.

Q. Do you know when that concept ceased?

A. With the institution of the first master contract in 1973.

Q. Did the master contract call for a discontinuation of the division chairman concept?

A. The master contract specified that no member of the bargaining unit could be in a supervisory relationship with anybody else in the bargaining unit, and since the chairman of the divisions were faculty members who were members of the bargaining unit, they could not supervise other members within the bargaining unit, so their position became irrelevant.

Q. Was there a need for a department chairman?

A. I think there is.

Q. What is the basis of your thinking that?

A. The division chairman where the members of the division essentially elect their own chairman provides a direct and democratic access to decisions that are very important for members of the division to make within the academic [R. 71] institution.

Q. Okay. Now, let's move to the faculty senate that existed at North Hennepin Community College. I would like to have you tell the Special Master some information about that. For example, who made up the membership of the faculty senate?

A. The faculty senate had three automatic members: That was the President of the college, the Academic Dean of the college, and the Dean of Students. Each division had a representative, academic division, and then there were several members who were elected at large. In the at large election every member of the academic community including the administration could vote for the at large members.

Q. Did the faculty senate have committees?

A. Yes.

Q. Do you recall the names of those committees?

A. Not all of them, but I know that there was a Curriculum Committee and an Academic Standards Committee. Beyond that, I'm not sure.

Q. What did the Curriculum Committee do, if you know?

A. The Curriculum Committee evaluated curriculum proposals that came from each separate department to determine how it fit in the overall curriculum program of the college, it evaluated new programs in case a new—totally new [R. 72] program, rather than just individual courses, was to be introduced. It would also, then, consider courses that had become obsolete, and there was a procedure for eliminating courses that were no longer beneficial.

Q. Who could submit proposals to the curriculum committee?

A. Any members of the faculty.

Q. Did the proposals have to come to the committee from the division, or could an individual submit a proposal?

A. An individual could submit a proposal. The typical way of doing this was to take it before the division, get a positive recommendation from the division before sending it on, but it was not required that it had to be done that way.

Q. Who among the college could attend a meeting of the Curriculum Committee?

A. Anyone.

Q. Was there any restrictions on who could argue for or against a particular curriculum proposal?

A. No.

Q. What did the Academic Standards Committee take up?

A. Academic Standards Committee took up such things as degree requirements, what a student would have to do in order to qualify for the various degrees at our college, what the procedures were for suspending students who did not keep their grades up to standard, and the review [R. 73] process for those students who were placed on probation or notified of suspension in case the student wanted to have that particular status reviewed. That was it, essentially.

Q. In your professional judgment were the standards maintained by the academic standards committee academically stronger or weaker than they are now?

A. Oh, I would say stronger.

Q. In what respect?

A. I am not sure right now that it is possible to flunk a student out of college, of suspending a student for poor grades. I am not aware of any procedure where that is now possible.

Q. Was that possible under the Academic Standards Committee structure?

A. Yes.

Q. Any other differences that you are aware of?

A. I am not sure now how degree requirements are determined. I don't know how that is done now.

[R. 74] Q. Who could attend the Faculty Senate meetings?

A. Anyone. When I say "anyone" any of the faculty members.

Q. Was there any restriction on who could enter into the debate on a particular proposal or issue that was before the Senate?

A. No, not that I am aware of.

Q. Are you aware that there were any restrictions on faculty members' opportunities to arrange for meetings with the

administration on an ad hoc basis regarding some aspect of college policy?

A. No, I'm not aware of any restrictions.

Q. Now, you had involvement with both teacher organizations; the State Junior College Faculty Association and involvement as a faculty member on the campus of North Hennepin Community College, is that correct?

A. Right.

Q. Now, as to teacher organization aspect, you mentioned that you were the President of the State Junior College Faculty Association. Were you ever in an office-holding position at North Hennepin Community College, that is as to the teacher organization?

A. No, except being a Delegate to the State Conventions of the Faculty Association.

Q. Now, what was the relationship between the faculty organization at North Hennepin Community College and the [R. 75] State faculty organization?

A. I am not sure I understand your question. You mean the faculty—the general faculty organization on the local level or the faculty organization on the local level?

Q Let me just get to this point, whether or not North Hennepin was a local or a chapter of the State organization?

A. Yes.

Q. And were there chapters on each of the other campuses?

A. Yes.

Q. Approximately how many campuses were there at the time?

A. I'm not exactly sure, 12 or 14, something like that.

Q. Now, the Minnesota State Faculty Association, that is, the Statewide organization, was sort of an umbrella, ap-

parently for the faculty on each of the campuses. Did that organization engage in collective bargaining?

A. No, no.

Q. Was there any part of the State Junior College Faculty Association that engaged in collective bargaining?

A. Well, again, I'm not exactly sure, you know, how to answer that because the Faculty Association on the State level represented the various chapters to the Community College Board and to the State Legislature but we did not negotiate and get involved in collective bargaining as defined by the 1973 law. So we represented [R. 76] them but I don't think it would be accurate to say we participated in collective bargaining.

Q. Now, in your capacity as President of the State Faculty Association, do you know or did you know whether there were local faculty organizations on each of the college campuses in the community college system?

A. Yes, there was local chapters on each one.

Q. Each one had its own President and Secretary?

A. Right.

Q. And that sort of thing?

A. Yeah.

Q. Did they have their own constitutions?

A. Now, I'm not sure that each college had its own constitution.

Q. Did the State organization have a constitution?

A. Yes, the State organization had a constitution.

Q. Did that apply to all of the community college campuses?

A. Yes.

Q. Now, was the Faculty Senate an entity that emanated from any bargain agreement that had been entered into be-

tween the Faculty Association and the State Board for Community Colleges?

A. No.

Q. Was there a Master Contract of any sort for the community college faculty prior to the spring of 1973?

[R. 77] A. No.

Q. So all of this organization that we have been talking about, would it be correct to say, is a product of the collective minds of faculty and Administration and it was not born out of some negotiation process, is that correct?

A. Right.

Q. When the Faculty Senate debated a particular issue what would it do with the issue then? Was there a vote or what was the process?

A. Yes, there was a vote. All members of the Faculty Senate would vote on it, including the President, who is an automatic member. Then after that debate and the vote then the resolution or whatever it was that was passed, then was given to the President as the President. Then he could accept it or reject it, but the Faculty Senate was the forum within which the President and the other Administrators would debate as equal colleagues with the other members of the Faculty Senate.

Q. Was there any opportunity for the classroom instructors who were not members of the Faculty Senate to enter into that debate in some kind of a regular formal way?

A. The primary way was that all the resolutions and motions passed by the Faculty Senate could then be brought up for debate and further review by—at a general faculty [R. 78] meeting. So if the general faculty did not approve of something that the Senate did there was then further review process at the general faculty meeting.

Q. Did the Senate make any efforts at all to let the faculty know in advance of a vote or in advance of a meeting?

A. Yes.

Q. On a particular proposal?

A. Yes.

Q. What the proposal was?

A. Yes, with each academic department having a representative who is most common for that department representative to sound out the other members of that particular department and that person would generally go with "an academic consensus" how the members felt about that issue.

Q. So there was a department meeting on that department issue?

A. Yes, though it would not have to be necessarily a formal meeting where we are going to bring up this up. The Senate member would often go up and down the hallways knocking on different office doors asking how people felt about this, if there was not time to bring it up at a regularly scheduled meeting.

Q. Did you do this kind of going up and down the hall in [R. 79] your capacity as Chairman?

A. Yes.

Q. Were these proposals put in writing and disseminated?

A. Yes.

Q. Or how were they handled?

A. Yes, they were normally put in writing and proposals were sent out to all faculty members in advance of the meeting where the vote would be taken to decide.

Q. But ultimately it's the Administration who has to make a decision on implementing a particular idea, is that correct?

A. Right.

Q. Did a vote taken by the Faculty Senate foreclose further debate on the particular issue?

A. Normally, yes, unless it was brought up before the general faculty.

Q. Could an individual go directly to the President of the college and express his view to the President on the action that the Senate had taken?

A. Oh, yes.

Q. Were there any restrictions on that at all?

A. No, no restrictions.

Q. Now, I want to move to your involvement at the level of Minnesota Junior College Faculty Association. What years or what period of time is it during which you [R. 80] were President of the Faculty Association?

A. I was President during 1968-69 school year.

Q. Did you continue to teach during that period?

A. I taught part-time and part of my duties were devoted to being President of the Association.

Q. What duties did you have as President of the Association?

A. Represent the members of the organization at the Community College Board and to be involved in political action so that we could get the best possible favorable treatment by the State Legislature.

Q. Did you lead the Faculty Association in any collective bargaining?

A. I represented the faculty in terms of the presenting of issues; but again it would not be fair to characterize that as collective bargaining, as collective bargaining has been defined by the law in 1973.

Q. What distinctions would you make between what you were doing and what you believed this 1973 law set up?

A. One is we didn't have a Master Contract. There were a series of State Junior College Board policies that we had a direct say in the establishment of. For example, the tenure policy. We did not specify in terms of any contract what the salary schedule would be. We dealt with the State Legislature in those determinations. So everything was not just spelled out in black and white [R. 81] and writing the way it is with the Master Contract.

Q. Now, you have referred to a 1973 law. Could you identify what law you are referring to?

A. I'm not sure of the exact number. I simply think of it as the Public Employees' Negotiation law. I'm not sure if there is a more accurate name for it or not.

Q. Well, have you heard the term Public Employee Labor Relations Act?

A. Yes.

Q. Would that be the law that you are referring to?

A. Yes.

Q. Now, after 1969 you were no longer President of the State Faculty Association?

A. Right.

Q. Did you continue to be a member of the Faculty Association?

A. Yes.

Q. Did you have any particular involvement in the Association?

A. No.

Q. Either at the State or the local level?

A. Just the unofficial status that comes with being the immediate Past President of the Association.

Q. Did you have any duties that go with that?

A. None that I recall.

Q. Now, you still have the Faculty Senate at North Hennepin [R. 82] Community College?

A. No.

Q. You have testified that you do not have the Department Chairman concept anymore?

A. No.

Q. When was the Faculty Senate concept done away with at North Hennepin?

A. At the advent of the first Master Contract in 1973.

Q. Now, do you know, was this a Contract that was negotiated pursuant to the Public Employee Labor Relations Act?

A. Right.

Q. I'm going to refer to that act from now on as simply PELRA. Do you know whether there were Faculty Senate on any of the other college campuses?

A. I don't really know.

Q. Now, 1973, and as I take it, this is apparently in the spring of 1973. What exactly happened that did away with the Faculty Senate?

A. When the first Master Contract was negotiated it eliminated reference to anything like Faculty Senate. So the Contract did away with it.

Q. What was installed in place of the Faculty Senate?

A. Faculty Association Meet and Confer Committees.

Q. Okay. Now, going back to the Board from 1966 at North Hennepin to the Board up until the spring of 1973, what [R. 83] was the relationship between the teachers and the Administration in terms of their working relationship? How would you describe that?

A. I would describe it as a relationship of collegial equals. I think that would be the fairest way of describing it.

Q. When you say "collegial equals" what exactly does that mean? What do you mean when you use that term?

A. When I use the term I mean that's something like the Faculty Senate meetings that an individual member of the Senate could debate and discuss as an equal with the President of the college who is right there. At the general faculty meetings we could discuss and debate as equals and that the President of the faculty—I viewed the President of the faculty as the first name among equals rather than as the superior, as the boss.

Q. Was the relationship between the teachers and the Administration essentially a cooperative one, would you say that?

A. Yes, I believe.

Q. All right. Now, what is your view of the—let's say the merits of the Faculty Senate as opposed to the merits of the Meet and Confer Committees that now exist?

A. Well, the merits, from my point of view, is whether I was a member of the Senate or not I could have a say [R. 84] in who the members were. I could vote on the English Department representative as well as at-large representatives, that I could have not only a say of the membership, but I could have a forum which I could express my views on various matters. It was acknowledged that it was my right as a faculty member to do that. Those are the chief advantages that I can see to the Faculty Senate as contrasted to the Meet and Confer Committees where I have no say in who the membership—who the members are of those various committees. I have no forum within which to express my opinions in a systematic way.

Q. Why not?

A. Because the Master Contract doesn't allow me to.

* * *

[R. 100] A. With the Faculty Senate and its related committees before 1973 I could either actively present myself as a potential member of any of those committees and if I had

enough votes I would be elected. I could vote on those other people who had served on the committees. I could have a forum even if I wasn't a member of the committee to go and directly present my views. With the Meet and Confer Committees I cannot present myself as a member. I cannot have any say in who are the members. I have no forum within which to present my views.

Q. Can you speak directly with the College President, or the Dean of Instruction on a question of college policy or curriculum?

A. It depends on whether you mean the question in a practical effective way as part of the official structure or whether, you know, I can talk to the President as we are walking across campus. Of course, I can talk to him, but if I were to say "President, my position on a curriculum matter," or even make a curriculum proposal directly to the Administration, the Administration head would kick it back to the Faculty Association Committee anyway. So if I chose not to deal with the Faculty [R. 101] Association Committee I could not circumvent the control that the Faculty Association Committee would have over my curriculum proposal.

Q. Do you feel that the President of your college or the Academic Dean at your college has his door open to you at any time on any subject?

A. I can walk in and talk with him. There is no problem with that. So, yes I can talk with him.

Q. Can you talk with him for the purpose of effectively influencing his decisionmaking?

A. No, I think I do not have any effective influence on any policy at all.

Q. Why is that?

A. Because we have no forum within which I can present my views effectively. There is no general faculty meeting, no Faculty Senate, no Division meetings as such.

Q. Let's go to your particular Division. You are still a member of the English Division of North Hennepin Community College, right?

A. Yes.

Q. Do you have Division meetings at all?

A. Only those that are called by the Administration.

Q. And what is done at these Division meetings?

A. We may find out what the general program that will be presented for the following year in terms of scheduling [R. 102] is; to find out generally what the budget might be that would be available for various individual members of the Department.

Q. Now, at these meetings called by the Administration do you have an opportunity to try to persuade or influence the Administration's decisionmaking on a particular issue affecting the Department?

A. I would say that with the exception of maybe changing a class schedule slightly, say from Tuesday night to Wednesday night, that with the exception of things like that that the decisions are pretty well presented to us as the decisions that have been made. If I don't like the amount of money that I'm going to get for hiring guest speakers in a class it is simply presented to me "This is how much you are going to get".

Q. Would you have had a greater opportunity to influence that Administration decisionmaking prior to the spring of 1973?

A. Yes.

Q. Did you in fact engage in that kind of dialogue with your Administration?

A. Yes.

Q. Now, what is it that has eliminated that opportunity in your Department now?

A. Well, the Master Contract has eliminated Division [R. 103] Chairman. I don't have anybody there speaking for me when the budgetary decisions are made.

Q. But what is it that prevents you from, at one of these meetings of the English Department called by the Administration, what prevents you from trying to influence the Administration's decisionmaking at those types of meetings?

A. The decisions have already been made at that time. They are not tentative decisions. They are presented. This is how much you are going to get. So at the end procedure before the decision is made, I have no opportunity to get involved in that now. Before 1973 I did because the Division Chairman sat in at the meeting when those budget decisions were made.

Q. Who makes the decisions?

A. In terms of budgets?

Q. No, who makes the decisions that ultimately become Administrative orders?

A. Well, I assume that some of those things come up before the Meet and Confer Committees, before the Administration reached their decision.

* * *

[R. 111] Q. (by Mr. Swenson continuing) Now, then, Mr. Knight, when you have a proposal for a new course who do you submit that proposal to in order to try to get it implemented in the college?

[R. 112] A. Since 1973 I haven't submitted any proposals for new courses.

Q. Why not?

A. Because any proposal that I would submit would have to go before a Faculty Association Committee.

Q. Do you have opportunity to evaluate the administration?

A. No.

Q. How is that done presently?

A. I do not know.

Q. How was it done prior to the spring of 1973?

A. There was different—there were different procedures followed. The one I remember was simply the administration asking for the different division chairmen to respond to how the administrators were doing, and through the division chairmen, then the faculty had a chance of expressing their opinions about the effectiveness of various administrators.

Q. Do you have an opportunity to evaluate your colleagues presently?

A. No.

Q. Was this evaluation process done under the tenure evaluation that you described before?

A. Yes. Up till 1973 we had tenure evaluation.

Q. Now, I would like to ask you to state for the Court what you regard as the duties or activities you should [R. 113] perform in your job as a professional educator.

A. What I should perform in my job as a professional educator, first of all, there is selecting the course material and outlining the courses for my specific courses and my students. I should be able to have a say in what the academic standards are for the college as a whole, what the overall curriculum program is for the college as a whole, and what the general academic atmosphere would be around the college. I should have a say in who the people are who are permanently added to the faculty in the form of tenure, and I should have a say in who my direct supervisor would be. Those are the things, primarily, that I should be able to do.

Q. What about evaluation of students?

A. Yes.

Q. Is that part of your tasks?

A. That would be part of the course activity.

Q. How about evaluation of the courses that presently exist, is that a part of your duties?

A. It is not now.

Q. Well, I mean, should it be?

A. It should be. It should be.

Q. And of course, you should be responsible for teaching in the classroom?

A. Oh, yeah.

[R. 114] Q. Now, of the activities that you claim should be a part of your job, which of those activities are, in fact, a part of your job right now?

A. Selecting my course material, teaching my classes, evaluating my students.

Q. All right. Now, you have excluded participation in determining academic standards, determining the general curriculum for the college, determining or influencing the general atmosphere of the college, establishing tenure for faculty, determining hiring of administrators and evaluation of courses and that sort of thing. Why do you not participate in those activities if you believe they ought to be a part of your work?

A. I am prevented from doing it by the Master Contract.

Q. How does the Master Contract prevent you from doing these things?

A. We have no tenure. I am not allowed to serve on Curriculum Committees. I have no say in the process of hiring administrators. Those things have been eliminated.

Q. How could you become a member of a Meet and Confer Committee?

A. I would have to become a member of the Faculty Association and then present myself, I assume, to the Association Membership for election on a Meet and Confer Committee. But I would have to become a member of the Faculty [R. 115] Association.

Q. Now, as to the list of activities that you claim should be a part of your job, were those activities a part of your job prior to the spring of 1973?

A. Yes.

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[R. 133] Q. Now the freedoms that you retain in the present system include many freedoms, do they not?

A. You will have to be more specific than that?

Q. Okay. You can speak directly to high-ranking Administration officials of the college and you have done so on any number of subjects?

A. Yes.

Q. You can speak directly to low-level administration officials?

A. Yes.

Q. Regarding any number of subjects?

[R. 134] A. Yes.

Q. And you have done so?

Q. You can certainly petition the Legislature on any subject that suits your desire, isn't that correct?

A. I assume I can, sure.

Q. John Helling, the President of North Hennepin, by the way, is he still the President there?

A. Yes.

Q. He has never said to you that "I can't talk to you because you are not a part of the exclusive representative"?

A. No.

Q. And in your own mind being able to talk to the Legislature is very very important because not one penny comes from the Minnesota Junior College Faculty Board?

A. Right.

Q. It all comes from the Legislature?

A. Right.

Q. And that's the most important forum for money for that organization?

A. Yes.

Q. And there are absolutely no restrictions on your power to petition the Legislature?

A. No, there is no restriction.

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[R. 148] Q. Mr. Knight in Direct Examination today you testified that you were not free to engage in some of the activities that you had engaged in before such as making recommendations regarding contents of setting a course, setting up a course, do you recall that?

A. Yes.

[R. 149] Q. Would you tell us upon what basis you make that decision and what authority you have for the proposition that you are not free to do that?

A. I don't understand your question.

Q. I understood your Direct Testimony this morning to be that you felt you no longer had the freedom to recommend courses that might be taught or courses that should be offered.

A. Okay.

Q. Do you feel you have that freedom at the present time?

A. No, I do not.

Q. Okay. What authority do you base that opinion on?

A. Because the Master Contract says that all of my curriculum proposals would have to go through a Faculty Associa-

tion Committee, and that I find totally offensive because I have no say in who is on that committee. So it's the structure is offensive to me as a professional teacher.

Q. So as I understand your testimony, it's not that you don't have the power to do that, it's just that the procedure is offensive to you?

A. Yes, the structure is offensive. That's what I'm getting at.

Q. But you do have the power to make recommendations on course work?

A. I have power to make recommendations to an organization [R. 150] that I am trying to face in Federal District Court. I do not trust the—my opponents in a lawsuit to watch out for my best interests in curriculum matters.

Q. What authority do you have for the proposition that the decision on curriculum is going to be made by anyone other than the administration ultimately?

Mr. Swenson: Your Honor, I think that question calls for a legal conclusion. I mean, when he is talking about authority, I don't know what he means by that.

Mr. Lindquist: I don't think this adds to the case. Objection sustained.

Q. You have indicated at the present time that you feel that you do have the right to select course material, teach classes and evaluate students?

A. Yes.

Q. And that some of the other rights that you described such as general academic atmosphere and that you should be able to evaluate the course matters, and others are rights that you don't feel you currently have?

Mr. Swenson: We are going to object as being a mischaracterization of this witness's testimony. He did not speak

of those things in terms of rights. He spoke of those things in terms of matters which he felt a necessary part of his doing a job as a [R. 151] professional educator.

Mr. Lindquist: All right. With that understanding, go ahead and answer.

A. All right. I don't remember your question relative to that.

Q. (by Mr. Goodwin continuing) Let me rephrase my question. As your Counsel has so eloquently put it, these are matters you feel are essential to the right kind of professional atmosphere?

A. Yeah.

Q. Reasonable minds can certainly differ on what is the right kind of professional atmosphere, isn't that correct?

A. Yes, okay.

Q. And other teachers have selected a different model than you would prefer, isn't that correct?

A. Yes.

Q. You have stated in your Direct Testimony that you have no option to avoid the Association other than to resign, isn't that correct?

A. Yes.

Q. You certainly have the option of seeking to have another exclusive representative certified, isn't that correct?

A. Yes.

Q. And that's an option that's available to any teacher, isn't that correct?

[R. 152] A. Yes.

Q. And you have the option with the current system of submitting your views on any subject to the college administration, isn't that correct?

A. I don't understand your question here.

Q. You have the option under the present system of submitting your views to the college administration, isn't that correct?

A. Now are you talking about a structure within which to do this, or just doing it as a casual citizen?

Q. You have the right as a teacher to submit your views to the college administration under the present structure?

A. Yes.

Mr. Swenson: We are going to object to that as calling for a legal conclusion again.

Mr. Lindquist: Well, he has already answered it. He said, "Yes."

Mr. Swenson: Do you have more to say?

The Witness: Yes, I do, because—

Mr. Lindquist: Go ahead.

The Witness: I have the right to do that, but there is no forum or structure where I can have any confidence that I will be heard or my views will be taken into effect as decisions are made. So as far as I can see, my presentation of any views that I have [R. 153] would not have any more effect than any casual citizen, and perhaps even less than some.

Q. (by Mr. Goodwin continuing) Nothing, of course, in the present system prevents you from calling a faculty meeting at any time you would like to do that?

A. I can't do that.

Q. You cannot extend out an invitation for a faculty meeting?

A. I cannot call a faculty meeting where we would discuss working conditions or conditions of employment or anything else like that. The contract prevents me from doing that.

Q. Have you ever tried to do that?

A. The Contract prevents me from doing that. The law prevents me from doing that.

Q. Have you ever tried to do that?

A. I have never tried to do it because it's against the law and the Contract.

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[R. 158] RECROSS-EXAMINATION

By Mr. Goodwin:

Q. Have you ever been told by any administration officer or precluded by any administration officer regarding expressing your views on any matter of concern to you?

A. No.

Q. Have you ever been told not to or precluded by any union official regarding expressing your views on any matter of concern to you?

A. No.

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[R. 169] Q. Do you recognize that as the Collective Bargaining Agreement that you are subject to presently?

A. Yes.

Q. Could you state how long you have been subject to collective bargaining contracts, whether this one or any others?

A. 1973 or 1974, the inception of the first Master Contract.

Q. And have all of these been negotiated by the MCCFA?

A. Yes.

Q. Have you had any opportunity to participate in their development?

A. No, I have had no such opportunity other than the opportunity of joining an organization which I refuse to do.

Q. Were you employed at North Hennepin before the first Master Contract came into being in 1973?

A. Yes, I was.

Q. You operated under the faculty senate concept that Mr. Knight spoke about yesterday?

A. That is correct.

Q. What is the difference in the way you operate as a professional teacher now as compared with prior to the first Contract?

A. I feel very strongly that when a professional educator, [R. 170] and I like to think of myself as such, is hired by a school district, or in my case the Community College Board or the State of Minnesota, that educator assumes an obligation to perform not only to his or her optimum capacity in the classroom, but to perform to his or her optimum capacity in the entire academic life of that institution. That was something which from 1967 to 1973 I seriously attempted to do. In 1973 and '74 I came to recognize that it was no longer possible for me to function in this way unless I joined a private organization that espoused views which I did not support, that operated in a fashion which I did not support and the connection with which I could—or the connection with which I saw in terms of its educational function to be a rather weak connection. I did not see it as an education organization, and as a consequence, even though it might be rather quaint to use the term, my conscience, my sense of what was right, my sense of what was appropriate made it impossible, literally impossible to voluntarily associate myself with the MCCFA, and

as a consequence, I have not been able to function in the fashion in which I seriously attempted to function from 1967 to 1973.

Q. I wonder if you could relate some specific activities that you engaged in prior to 1973 that you no longer engage in.

A. Oh, certainly. I was during 1968 and 1969 president of [R. 171] the North Hennepin local of the Minnesota Junior College Faculty Association, the old MJCFA which became the MCCFA. I was extremely active in that. I functioned as a member of and as chairman of the tenure committee which I considered to be a very genuine function. In 1968 and 1979 and again in 1970 and 1971—for the better part of 1970 and '71—I functioned as chairman of the English Division. They are just indications of the degree and extent of my involvement. I was faithful in attendance at all meetings of the Faculty Association. I attended voluntarily even though I never functioned as part of its meetings of the faculty senate. In other words, I was so involved that I wasn't really home all that much during that period of time.

Q. Was membership in the Minnesota State Junior College Faculty Association a voluntary membership?

A. Yes, it was.

Q. Was there—

A. Yes, it was.

Q. Excuse me. What were you going to say?

A. No, I just repeated it.

Q. Was there any requirement that non-members pay dues or fees to the Faculty Association?

A. No.

Q. That is to the earlier Faculty Association.

[R. 172] A. No, there was no such requirement.

Q. Now, I want to direct your attention to approximately the year 1973. In that year were you involved in a constitution committee?

A. Yes, that's true, I was. Mr. John Winkleman was president of the local association at that time. I was still a member of the organization and I asked him—I was not elected to the position, it's the sort of thing for which one volunteered—if I might serve on the committee that would be charged with the responsibility of drafting a local constitution to operate then within the framework of the new order or the Master Contract, and Mr. Winkleman then said, "Yes, you may serve on that committee." I volunteered for it.

Q. What was the outcome of the committee work?

A. Well, presumably the outcome of the committee's work was the formulation of a constitution. The outcome of the committee's work in terms of what I would have liked to have seen that committee do was not what I would have hoped.

Q. What did you—

A. Would you like to have me just relate all of this?

Q. Yes.

A. It was my hope. I had begun at that point to suspect that there would be very fundamental changes in the method of [R. 173] operation in the faculty senate concept in the sense of colleagueality, in the definition of faculty as being an academic community rather than as an adversary—two adversarial camps. I had begun to suspect very substantial changes would come to pass and I saw this constitution committee, then, as a very critical committee and whether my judgment was right or wrong, I went into that committee with the intention of preserving as much of the old sense of colleagueality, the old sense of the college as being an academic community as it would be possible for me to preserve. That was my intention.

I went into the committee and one of the first issues which I raised was the fashion in which individuals who were not members of the MCCFA—as I was at that time a member—would be granted representation on the executive board, the executive council—I do not recall precisely the name—but the central governing body of the MCCFA. I felt that it was critical that they be so represented by some proportional formula, and I posed that, and was met by Mr. Neil Sands who is a very strong faculty association person, a rather firm objection to that idea. It seemed to be the feeling of the activists in the MCCFA on the committee is that faculty members who were not part and were not part of the Union would not indeed be proportionally represented. And at that point I raised [R. 174] what was sort of my, if I may speak metaphorically, damascus role of experience, I said at what time—at what time does a person become a professional educator, when the Community College Board or when the State renders the judgment that you are acceptable? Am I a professional educator at that point or am I a professional educator when I join a group that purports to represent professional educators? When I join the Union do I become a professional then? And at that point Mr. Sands' response was, "You become a professional when you join the Union." And what happened to the Constitutional Committee after that, I really don't know because I did not attend any more meetings.

Q. Do non-members of the Union presently have representation on any of the faculty committees?

A. No.

[R. 175] Q. Now, are you required to pay a Fair Share Fee to the MCCFA?

A. Yes, I am.

Q. Do you know how much you pay.

A. It was $160 and some-odd cents during the last calendar year and it's gone up. It's gone up every year; but then I suppose is subject to inflation.

Q. So it was approximately $160 and—

A. $160 and some-odd cents during 1979.

Q. All right. And during 1980 do you know how much you paid so far?

A. I think I paid in excess of $125—$125-$135 to this point, but that's an approximation. I don't have my stub with me.

Q. Are you satisfied that the fee is in fact a fair fee?

A. No, certainly not. I believe that it's assessed now at 85 percent. If it's set at 1 percent its inconsequential, I would object to it regardless of the amount.

Q. Now, are you familiar with the exchange of views committees at North Hennepin Community College, that is, are you aware that they exist?

A. Yes, I'm aware of the fact that they exist.

Q. Have you ever sought membership on one of those committees?

A. Yes, I sought membership on both the curriculum and [R. 176] personnel committee.

Q. And when was that?

A. Really in this whole thing I should keep a journal. To the best of my recollection in '75 the Curriculum Committee in '76 in the Personnel.

Q. Were you successful in your attempt?

A. Well, the original announcement, you know, committees that are traditionally not growing very frequently. Anyone who has ever headed up a committee knows the joy of volunteering.

There was some initial joy when I volunteered. This May, it was discovered that I was unfortunately not qualified to serve on those committees—

Q. Why were you not qualified?

A. Because I was not a member of the Union.

Q. Is that what you were told?

A. That's right.

Q. And now, is there an Executive Committee under the Faculty Association at North Hennepin?

A. Yes, there is a committee now.

Q. Could you describe what the makeup of that committee is?

A. Yes. Since I was forced out of active participation in the affairs of the institution in 1973 and 1974 I have lost track of the changing terminology. So whether it is now an Executive Committee, or an Executive Board, or [R. 177] precisely what it is called I can't recall precisely; but there is such an organization, yes.

Q. What is the makeup of that committee?

A. Well, I know that each—well, you see the English Department is probably the largest single cohesive functioning academic unit at our institution. It remains substantially unchanged in our structure since I first came in 1967 and I know that this group elects annually a representative to this board, or this Executive Committee, or whatever it might be called. Presumably there is some system then for representing other members of the Union faculty throughout the entire school. Just exactly what the precise outlines of that are I don't know.

Q. Are you represented by the representative from the English Department?

A. The English Department has a representative on that committee.

Q. But, I mean, are you represented personally?

A. I don't feel that I am so represented. I guess that that's a matter of how one views representation. I don't happen to feel that I am fairly represented by an individual who I am not empowered to select or whose selection I am not empowered to participate.

Q. Have you ever attempted to participate on this Executive [R. 178] Committee that we referred to?

A. I have not sought direct participation in that group, no. I used to go to some of their meetings.

Q. Well, have you ever had an opportunity to speak to the group or to argue on a debate on a particular issue before the group? Have you ever attempted to do that?

A. I have never attempted to debate before the group. I sometimes went to listen. It's hard to break old habits and going to meetings.

Q. Were you welcomed there?

A. No, as a matter of fact after the attendance at one such meeting there was a later resolution passed which was—did not mention me by name, but which resolution—presumably this is in the record of the Association itself, which organization then passed the resolution saying that nonmembers were not welcome to attend such meetings.

Q. Nonmembers of what?

A. Of the Union and, as a consequence, I just never attended any more. I didn't push the issue to see if they would in point of fact thrust me from the door. I just didn't go back.

Q. Now, is that Union that you are referring to, is that the MCCFA?

A. That's right.

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[R. 186] Q. Now, let's move on to another topic briefly and that is the question of whether you felt free to talk to your administration regarding your employment.

A. No, I did not.

Q. Why do you feel that way?

A. Well, I feel that way because Article I, recognition, in the Master Contract says "The employer will not, during the life of this contract, meet and negotiate or meet and confer relative to the terms and conditions of employment with any employee or group of employees who are covered by this contract except through the exclusive bargaining representative." I might not read it properly but it seems to me to be clear. I am forbidden by that contract to do that so I cannot and I do not.

Q. Now, I would like to direct your attention to the meetings that are—well, first of all, are meetings held from time to time at the English Department level?

A. People who teach English are called together to meet with the Dean of Instruction. Whether or not there is, under the contract, a cohesive department, I guess I have always questioned. But, yes, we do with the Dean of Instruction.

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[R. 193] Q. Have you ever had a college administrator tell you that he could not listen to you regarding any matter of concern to you?

A. I would very much like to explain for the Master what my attitude is toward that.

Q. I think your Counsel can clarify that on Redirect Examination. I have a precise question—

A. What was it?

Q. Have you ever been told by a college administrator that he could not listen to your views or concerns on subjects of interest to you?

A. I have never brought such concerns to an administrator.

Q. So you have never been told by a college administrator that he could not listen to you?

A. They have never had the opportunity to so react.

Q. My question still stands. You have never, then, been told by a college administrator that they would not listen to you, is that "yes" or "no"?

A. I have never been so told.

Mr. Swenson: He has answered the question.

Mr. Goodwin: All right.

Q. And you certainly can talk to your fellow teachers about your viewpoints and your opinions on matters of concern to you.

[R. 194] A. That's an extremely difficult question to answer. I talked to them a number—to a number of them about such concerns. It's rather difficult to talk to some of them about my concerns since they will not speak to me at all.

Q. But there is no preclusion of you talking to your fellow members regarding matters of importance to you, isn't that correct?

A. What do you mean by my "fellow members"?

Q. Your fellow teachers, excuse me.

A. In the hallway, in the latrine, in the formal EOV meeting, it would vary, it would depend upon the circumstance.

Q. You, of course, can write letters to the administration regarding your viewpoint, can you not?

A. Oh, yes.

Q. And no administrator has ever told you that you cannot send a letter to him regarding—

A. No, no, they haven't told me that.

Q. And you can write letters to other officials, other State Officials other than administrators regarding your viewpoints of matters of concern to you?

A. It depends now. I have written a letter, if that's what you're talking about. I would be happy to tell you about that letter, if you want me to.

Q. You have written letters in the past?

A. I have written a letter.

[R. 195] Q. And you can write letters to other State Officials other than college administrators, can you not, on matters of concern to you?

A. I am capable of writing a letter, yes.

Q. And you certainly are free to talk to your State Representative on any matter that you choose to address, isn't that correct?

A. I can speak to my State Representatives about my opinions relating to any matter. However, in most of those matters, that Representative is not compelled by law to turn a deaf ear to me.

Q. No citizen has a special benefit where a State Legislator is going to be compelled to respond affirmatively to their request, are they?

A. No, but he is not compelled to respond negatively, either.

Q. In any event you are free to initiate those kinds of conversations, either orally or you can do it in written fashion?

A. I can write a letter to the Ayatullah asking him to free the hostages.

Q. None of these activities, writing letters or speaking, whether it be to the Legislators, college administrators or other State Officials, has ever in any way jeopardized your job?

A. No.

Q. And you have never been told by any State Official that [R. 196] your viewpoints however expressed were going to cause you your job?

A. No, but once again, I don't feel that your question permits me to express the type of view that I want to express.

Q. I think your Counsel can clarify that on Redirect, if he so chooses.

A. What was your question again? I'm sorry, I tend to forget them.

Q. I believe you have answered. And there has been no union representative that said to you that you will lose your job because you express certain views?

A. No union representative has ever used those words to me, no.

Q. And of course, you are free to band together in whatever group you would like to to pronounce ideas or opinions that are opposed to the exclusive representative system, are you not?

A. Once again, there is—I have freedom to do that, but the realities of the circumstances sometimes dictate otherwise. You effectively have no choice.

Q. So you are—

A. There is a difference between the practical and the theoretical. I think you know that.

Q. Your complaint is that you are free to do any number of things, but that you are not convinced that someone will [R. 197] act exactly as you request?

A. I don't expect anybody to act exactly as I request. I never have. I happen to be a believer in the democratic system, and I would like to participate in it.

Q. And you have the freedom to participate in it in the fashion we have just described, isn't that correct?

A. I would not characterize the fashion which you have described as being a democratic system. That's my objection in the first place. You are putting words in my mouth.

Q. You do not have to give any support to the Minnesota Community College Faculty Association other than a fair-share fee, isn't that correct?

A. I have had pressures brought to bear upon me to give allegiance other than the allegiance of money.

Q. And you have not given your allegiance?

A. And I have not given it.

Q. Okay. So the response, then, is, as I understand your testimony, that you have not given any allegiance or support to the MCCFA other than your fair-share fees which have been escrowed, isn't that correct?

A. No, and I don't feel that I have offered them allegiance and support by that. They have simply taken it. I suppose they could draft me.

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[R. 200] Mr. Lindquist: Mr. Mueting.

CROSS-EXAMINATION

By Mr. Mueting:

Q. Mr. Kjer, you had mentioned that you didn't support the strike that occurred in the community college system, is that correct?

A. That's correct.

Q. And that you exhibited your non-support for the strike by entering the classroom and trying to carry on your normal duties during the period of the strike?

A. I did not try to carry them on, I succeeded.

Q. I see. In that respect, were you impeded in any way by any college administrator?

A. No, I was not.

Q. Do you disagree with the concept of strikes by public school instructors generally?

A. It would be extremely difficult for me to answer that question, but if I have to say so, I guess philosophically, yes, yes, I do.

Q. Has President Helling been the President at the college ever since you have been at North Hennepin?

A. Yes.

Q. Have you ever spoken with President Helling privately?

A. Oh, sure. I did this morning.

Q. Since 1973 have you ever felt or have you ever been advised [R. 201] by President Helling not to speak with him?

A. I have been assiduous in my attempt to avoid placing him in a position where he would have to make that type of judgment.

Q. Is that based on anything that has been told to you by any college administrator?

A. No. It's based on what's told to me by the Master Contract.

Q. You indicated that you have communicated to someone in the community college system by letter, is that correct?

A. Yes.

Q. When was that?

A. I sent President Helling a letter last winter.

Q. And you mentioned that you meet fairly regularly with the Dean of Instruction?

A. I did not say I met fairly regularly with the Dean of Instruction, no. We meet once a quarter, I believe it is. I could be in error there, but once a quarter. Three times a year I would not characterize as being regular.

Q. Does the Dean prepare an agenda, you say, for those meetings?

A. Yes.

Q. And she tries to stick to her agenda?

A. Yes, she is very competent, very nice. She even has us out on time.

Q. Maybe I was assuming this: It is her agenda, then?

A. Yeah, she prepares it.

[R. 202] Q. Have you ever attempted to bring up anything outside the scope of that agenda?

A. No, I haven't.

Q. Have you ever met with any other administrators in the course of your duties or outside the course of your duties at—

A. We are required—every instructor is required every year—there is a concern at North Hennepin for improvement of instruction—to meet with an administrator relative to improvement of the instruction, and I have so met, yes.

Q. Have you ever been invited generally, not personally, but generally to attend any meetings, conferences or sessions with the president of the college to discuss any matters that you felt were relevant to you or that you were interested in?

A. Well, are you asking for a "yes" or a "no", or do you want the instance?

Q. I would like a "yes" or "no".

A. Yes.

Q. Who was the administrator?

A. President Helling.

Q. And is this on just one occasion?

A. Well, when school assembles in the fall, I understand with the exception of this year which is going to be different, we are all together and general information is passed out [R. 203] and new faculty are introduced, the status report on how

the sprinkler system is working and how the tennis courts are going, and we are sort of briefed on what's been going on during the summer. Yes, that's happened.

Q. Have you ever been invited to such a session when you were able to present to the President or anyone else present what your views were on any particular subject?

A. Oh, I'm sure I could have stood up and said something, but once again, I am not going to place my president under the stress of having to violate the principles espoused and the statements made in the Master Contract. I am not going to do that.

Q. Are these opening-year sessions the only opportunities that have been presented to you to meet—

A. No, no.

Q. Let me finish the question—to meet with John Helling or any other administrator on an informal basis?

A. Well, he sent a letter of invitation for all faculty to attend a rather nice breakfast after the strike last year. The difficulty was that I never got the invitation, and neither did anybody else who was not on the strike, but he tells me he sent it, and I believe him.

Q. Have you ever attended a community college board meeting?

A. No.

Q. Were you aware that community college board meetings —or [R. 204] a meeting has been held on the campus at North Hennepin Community College?

A. I am aware of that since yesterday.

Q. So that was the first time you have heard about it?

A. Yes. I don't read everything as carefully as I might. I am not suggesting that it wasn't advertised.

Mr. Mueting: I have no further questions.

REDIRECT EXAMINATION

By Mr. Swenson:

Q. Now, Mr. Kjer, are there any subjects—Mr. Goodwin has asked you the question whether you are free to talk with your administrator about concerns, your concerns, he has asked that kind of a general question. Now, I ask you are there any subjects that you are aware of that you may not talk to your administrator about for the purpose of influencing his decision on an issue?

A. I am not free to speak to my administration relative to curriculum matters. I am not free to speak to my administration relative to personnel matters. I am, in point of fact, not free to speak with my administrators on anything which is covered by the Master Contract. The Master Contract is very clear on that, unless I am misreading it just grossly, any condition of my employment, anything relative to terms and conditions of my employment, I am not free to speak to my administration.

[R. 205] Q. How do you get the Master Contract?

A. It comes in the handbook. I have always—

Q. Where does the handbook come from?

A. The handbook is distributed at the beginning of every school year prior to the start of this meeting which Mr. Mueting just described.

Q. By the administration?

A. Yeah.

Q. Do you understand that the administration intends to enforce the terms of that Contract?

A. I do not wish to place the administration in the awkward position of having to make that judgment. I believe that I am—no matter how noxious I might find the Master Contract—bound by it because of the law. So I don't run around

talking to the administration about things which are forbidden by the Master Contract. I don't want to put them in that position.

Q. But if you were to put them in that position, do you understand that the administration would be called upon to endorse that Contract?

A. If they want to follow the Contract the way I follow it, yes.

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TRIAL TESTIMONY OF
RALPH G. POWELL
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269-270

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[R. 258] Q. Did Mr. Oatey ever tell you he would never talk to you if you didn't belong to the Facilities Committee? My precise question is did he ever tell you that he wouldn't talk to you about the facility?

A. I have been told by various Administrators—

Q. My question is did Mr. Oatey tell you that?

A. He has never said that he would not talk to me. He was not involved in the construction business anyway.

Q. Okay. Mr. Oatey's predecessor, did he ever tell you that he would not talk to you regarding the construction of the facility, whoever that predecessor was?

A. I was told that some things should be taken through channels.

Q. What that his predecessor, Mr. Oatey's predecessor?

[R. 259] A. No, of the Administrators that I mentioned I cannot give you dates or situations, but it seems to me that

it's been routine that in many of my discussions where the statement would be made that that would most appropriately be taken to faculty committees rather than dealing with it correctly.

Q. So you don't know if Mr. Oatey's predecessor made that comment or not?

A. I don't remember that he did or did not, either one.

Q. And you don't like an adversarial relationship because you believe it's against the kind of personal approach that you like to adopt at college?

A. I think it's counterproductive.

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[R. 260] Q. But, as I understand your testimony today, the primary complaint you have is that the posture of the dealing between teachers and administrators is not an adversarial one rather than a cooperative one?

A. No.

[R. 261] A. No. My personal feeling is that I do not have the freedom of choice of organizations or freedom of latitude of dealing with what I perceive as my professional responsibility because of the limitations of the exclusive agent that we now have.

Q. (by Mr. Goodwin continuing) There is no question in your mind, is there, that you can talk to any of your teachers regarding any subject or any opinion you have on any subject of concern to you?

A. Talking about them and effecting results are two different things.

Q. But there is no question you can talk to them about your views?

A. Absolutely.

Q. And there is no question that you can write letters regarding your views?

A. That's true.

Q. There is no question you can talk to State Representatives such as Legislators regarding your views, isn't that correct?

A. The response of many Representatives is that they will deal with an organization.

Q. There is no question that you can talk to a State Representative just as I can talk to a State Representative?

A. That's a freedom of the citizen.

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[R. 269] Mr. Lindquist: We went over that, Mr. Swenson.

Q. (by Mr. Swenson continuing) Now, on the Cross-Examination by Mr. Goodwin you were asked a question regarding a Mr. Oatey, and I believe the question was, essentially, whether Mr. Oatey or his predecessor had ever told you that you could not say certain things or speak to certain people. Do you recall that question and the testimony?

A. Yes, and the thing I tried to say was that, no, there has never been a time when I could not talk, but there have been occasions in whatever the topic happened to come up that I was told that that would best be handled through the procedures, Exchange of Views, and so forth.

Q. Who would tell you this?

A. Which ever administrator I would happen to be talking to and so forth.

Q. I see. Now, again, during Mr. Goodwin's Cross-Examination, Mr. Goodwin asked you whether you could talk to administrators and other teachers, whether you could write letters, whether you could talk to State Legislators and that sort of thing, and you said "Yes". My question to you on this

point is whether you believe that this talking and writing and so on is effective and productive communications with [R. 270] the people you want to talk to.

A. I said there was certainly a difference between merely talking and being able to achieve one's goal or establish one's position, and that in our given structure with the Faculty Association and Contract, that there is little opportunity for any effective establishment of a position other than the Faculty Association position.

Mr. Swenson: No further questions.

Mr. Mueting: I would like to ask two questions.

RECROSS-EXAMINATION

By Mr. Mueting:

Q. On your Redirect you talked about channeling communications through the Exchange of Views process. Were you a member of the MCCFA at the time this was told to you?

A. Uh-huh.

Q. Yes.?

A. Yes, I'm sorry.

Q. Were you a member of the Facilities Committee at that time?

A. Yes.

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TRIAL TESTIMONY OF
TERRENCE D. FLORIN
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[R. 277] Q. Had you ever attempted to become a member of Exchange of Views Committees at Normandale?

A. Yes.

Q. Could you just relate what those efforts were and what the results were?

A. Yes. In the fall of 1973, after classes commenced, during the first few days it's customary to organize in some fashion or another, and it wasn't at all clear what the organizational government structure was going to be at that time. Prior to that time we had had a system of governings known as the Faculty Assembly. The Faculty Assembly was divided into academic disciplines and divisions of disciplines along fairly traditional lines; humanities, social sciences and mathematics, etc. It was customary for those groups to meet and elect representatives to the various standing committees of the Faculty Assembly, academic standards, Personnel [R. 278] policies and so forth. At that meeting, for the science division, for which psychology was a part at that time, I put my name in nomination to represent the Social Science Division on the Academic Standards Committee of which I had been a member for the succeeding four years. I was informed by Mr. Michael Cummings, who is also a member of the Social Science Division at that time, and a member of the Association, that it was inappropriate for me to represent the Social Science Division because I was not a member of the Faculty Association. I left my name in nomination but I didn't receive any votes.

Q. So were you prohibited then from becoming a member of the Academic Standards Committee?

A. Yes.

Q. Would you describe the structure of the faculty at Normandale as it was prior to the spring of 1973 for the purpose of comparing that with what the structure is presently?

Mr. Goodwin: Your Honor, I object at this time. If it will expedite this we will stipulate it was a Faculty Senate through

four witnesses applicable as at Normandale as it was to North Hennepin.

Mr. Swenson: If that's true we will stipulate it.

[R. 279] By Mr. Swenson:

Q. Is that correct, that you had the same situation as at North Hennepin?

A. My understanding is it was somewhat different. The Faculty Senate, as it has been traditionally conceived involved representatives from various academic divisions of one sort or another representing their divisions, sitting in a representative body. The Faculty Assembly at Normandale ultimately involved decisions and votes being made by a more or less pure democratic form. They had committees that handled various kinds of functions, academic standards, personnel policies and so forth. But when those committees would make recommendations to the faculty as such as a whole and would be voted upon, in that way, in other words, decisions or votes were not taken by representatives but rather were cast by individuals in an assembly group.

Q. Now, there was a teachers' organization at that time, was there not?

A. Yes.

Q. That is prior to the spring of '73?

A. Yes.

Q. Was there any restrictions on who would become a member of the Faculty Assembly based upon membership in any organization?

[R. 280] A. Certainly not.

Q. So that he would become a member of the Faculty Assembly by virtue of being a teacher at the college, is that correct?

A. If you so desire.

Q. Now, what's the present situation?

A. The present situation is very simply in order to represent any group one must be a member, that is to say, sit on one of the committees which interact with the Administration. One must be a member of the Faculty Association.

Q. Well, can you be a member of one of the Exchange of Views Committees if you are a nonmember?

A. No.

Q. But otherwise apparently the Exchange of Views concept is the same as Normandale as we have heard it talked about at North Hennepin?

A. That is my understanding, yes.

Q. Could you characterize the nature of the relationship between the faculty and the Administration prior to the spring of 1973 for the purposes of comparing it with the present situation?

A. The relationship between the faculty and the Administration prior to the institution of the Master Contract was very seldom, if ever, a question or an issue.

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[R. 283] Q. Do you feel that you are required to support the MCCFA in any other way or if not support at least acquiesce?

A. I have no function in the academic governance of the institution because I am not a member of the Faculty Association.

Q. Well, when you say you have no function, do you mean you have no opportunity to participate in the exchange of ideas and expression of views?

A. That's correct.

Mr. Swenson: Okay. No further questions.

CROSS-EXAMINATION

By Mr. Goodwin:

Q. You have heard Mr. Powell testify today, haven't you?

A. Yes.

Q. You would agree with him that, of course, you can speak and write on any number of subjects near and dear to your heart?

A. I'm not sure I understand the question.

Q. Let me make it a little clearer. You can speak and write on any subject you want to?

A. To write or speak on?

Q. To write and speak on?

[R. 284] A. Yes.

Q. And you object to the change because you believe it is a deliberate attempt to react in an adversarial way rather than more of a collegial way?

A. That's correct.

Q. Which is to say another way you object to it is because teachers are now acting like a Union rather than the traditional Senate?

A. I'm objecting to it because I find that the methods which had been employed in the construction and conduct of this organization are, in my opinion, inappropriate in the circumstances involved.

Q. While that model, in your opinion, may be appropriate for common laborers it certainly isn't appropriate for the educational elite?

A. I'm not sure whether it's appropriate for what you call "common laborers" or not. I am not a member of the educational elite so I can't speak for them either. I am a member of the educational community and as such I think it's inappropriate for the educational community.

Q. Even if all of the activities, every single activity that the collective bargaining representative engaged in deals directly with negotiating a wage package for you, you would still object to have that system applied to you, is that correct?

[R. 285] A. That's correct.

Mr. Goodwin: I have no further questions.

CROSS-EXAMINATION

By Mr. Mueting:

Q. Mr. Florin, the committee assignment which you sought, I believe it was the Academic Standards Committee?

A. That's correct.

Q. Was that a faculty committee?

A. Prior to that time the committee was composed of—whether it was the Academic Standards Committee, Personal Policies Committee, or what have you, were composed of both faculty and Administration. So it would be inappropriate to characterize it as "faculty committees". In other words, the President, the Dean of Students, the Dean of Instruction, the Assistant Deans of Instruction, etc., served on those committees.

Q. So there was just one committee?

A. That's correct.

Q. Comprised of both administration and faculty?

A. Yes.

Q. You sought to be a faculty representative?

A. That's right.

Q. And I take it from your testimony that you did not receive a vote, there was an election?

A. Yes.

[R. 286] Q. You weren't elected?

A. I left my name in nomination but it was strictly one of the Faculty Association members.

Q. Did the Administration at Normandale have anything to do with the selection of faculty membership on the committees?

A. Not to my knowledge.

Mr. Mueting: No further questions.

REDIRECT EXAMINATION

By Mr. Swenson:

Q. Mr. Florin, on Mr. Goodwin's cross-examination you were asked whether you could speak on any subject that was basically what the question was. You said "Yes." Now, would that include speaking personally and directly to your Administrator about your terms and conditions of employment?

A. As I understand Mr. Goodwin's question it was a very general question, it wasn't qualified in any way. I, of course, can—that is to say, I am able, at least at the present time, to speak whenever and wherever I choose. Whether or not I will be heard is quite a different matter.

Q. Well, do you think you will be heard at Normandale?

A. No.

Q. Do you know any particular reason for that?

[R. 287] A. Because I am not a member of the Faculty Association.

Q. Now, so far as you know, does the MCCFA only engage in negotiating a wage package?

A. Certainly not.

Q. What else do they do?

A. As nearly as I can tell their influence permeates almost every aspect of my job, certainly the environment in general is affected by the Faculty Association. The governing structure, which is traditionally been an internal college or university, and I don't care whether you're talking about Normandale Community College or whether you are talking

about Harvard University, they have traditionally been internal. My interpretation of the events of the summer of 1973 indicated to me that the internal governing structure of Normandale was no longer in our control, it was out of our control and it was in the hands of the State Union officials.

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[R. 289] Q. Do you recall on the examination of Mr. Swenson that he asked you the question "Do you feel free or can you talk to your college Administrators at Normandale," do you recall that?

A. Yes, I do.

Q. As I recall your answer you said you didn't think you could or did I misunderstand you?

A. What I was attempting to say was that, you know, if I encountered one in the hall and I started talking to them I could certainly do that and as long as I was talking about the weather, those kinds of mundane things, I would probably get a response. That is to say I would probably be heard. If I started objecting to some aspect of the governance of the institution, or the environment, etc., other than the external environment, it would go, at least as far as I can tell, unheeded.

Q. Well, you responded by saying "Yes I did that". Have you ever done that? Have you ever talked to an administrator since the Master Contract came into effect regarding terms and conditions of employment?

A. On two occasions I have attempted to.

Q. And they listened to you?

[R. 290] A. No.

Q. Who were they?

A. Dr. Arland Otty who was at that time and is the Dean of Instruction.

Q. And the other individual?

A. Same person both times.

Q. Okay. I take it they turned around and walked away?

A. It happened to be in Dr. Otty's office and he suggested to me that it was inappropriate for him to communicate with me on that particular subject because I was not a member of the Association nor had I been approved. I think that was the term he used. I had not been approved or appointed by the State Faculty Association to talk about those kinds of subjects.

Q. What was the subject?

A. I think it had to do with the class scheduling.

Q. Do you know if that particular subject is covered in the Master Contract?

A. My understanding is that terms and conditions of employment under which class scheduling and that sort of thing would fall is an issue which is relegated to decisions but that are relegated to the Administration to be advised or conferred, I'm not sure of the language, with the Faculty Association in a Meet and Confer capacity or something to that effect.

TRIAL TESTIMONY OF
JAMES K. DURHAM
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* * *

[R. 466] Q. Sir, you testified that you were in a leadership position in MCCFA prior to the application of the Public Employment Labor Relations Act to the community college, is that correct?

A. I held office.

Q. Now, prior to the application of PELRA was it your understanding that decisionmaking authority over terms and

conditions of employment in the community colleges was solely vested in the Community College Board?

A. Okay, which authority again?

Q. Decisionmaking authority for terms and conditions of employment, that is, they had to go to Legislature of course to be founded, but in terms of decisions in the colleges themselves, the Community College Board and [R. 467] its administrators were the sole decision maker?

A. Yes, with the exception, however, much of the Legislature and Executive Branch of the State government impinged upon that.

Q. At that time then they had unilateral authority to make decisions in terms of conditions of employment?

A. Again with that same qualification.

Q. Leaving out the superiors in the government?

A. Yes.

Q. There was no need for them at that time, was there, to meet and negotiate or meet and confer with any faculty organization or with MCCFA prior to exercising this decisionmaking authority?

A. Well, yes, I think there was a need for them to. I think there is always a need for management.

Q. I'm not talking perhaps factual need for information, required to do so.

A. You said requirement, I don't believe there was a legal requirement.

Q. Now, under Public Employment Labor Relations Act the situation is somewhat different from that, is it not?

A. That's true.

Q. Now, there is a legal requirement before terms and conditions of employment are established in the community

colleges, the Board or its agents must meet and negotiate [R. 468] with an exclusive representative, is that correct?

A. That's correct.

Q. And before the Board or its agents take certain actions that are subject to the so-called meet and confer proceedings of PELRA they must meet and confer with the Community College Faculty Association, is that correct?

A. That's correct.

Q. Sir, have you ever heard of the phrase "countervailing power" used in the context of labor relations?

A. Sounds like something I might have heard but it's not a real part of my knowledge, if you're after something specific.

Q. Well, let's come at it this way, what is MCCFA's policy or attitude because perhaps it has not been put into written policy toward the Community College Board refusing to negotiate terms, and conditions or employment with MCCFA?

A. I don't understand your question.

Q. Well, does MCCFA take the view that the Community College Board has the authority to refuse to negotiate terms and conditions of employment with MCCFA or any part of terms and conditions of employment with MCCFA?

A. First of all I believe that the statute designates the Commissioner of, it was Personnel, now Employee Relations with that responsibility and the Board has been included, [R. 469] but that the statute does not refer to the Board.

Q. All right. Well, amending the question then, talk about the negotiator, whoever that happens to be, spokesman for the Board, authority that speaks to that question on behalf of the Board, does MCCFA accept the proposition that that agent, whoever he may be, has any authority to refuse to negotiate any aspect of terms and conditions of employment with MCCFA?

Mr. Miller: I'm going to object to the extent that calls for legal interpretation by this witness on what the employer's legal powers will be under PELRA. Answer it if you can, Mr. Durham.

The Witness: That was what I was searching for in my mind, what that legal definition is. I know there are some categories of Management's rights that are excluded from bargaining. I couldn't list all those for you now but other than that, legally the parts that are not excluded then I would say, yes, the State must negotiate with the exclusive representative on the other items.

By Dr. Vieira:

Q. Is the policy of MCCFA with respect to terms and conditions of employment included in the Master Collective Bargaining Agreement that the State cannot change, alter, modify those conditions without first consulting with [R. 470] MCCFA?

A. It is our position that a signed contract cannot be altered even after consultation. It can only be altered by mutual agreement of both parties.

[R. 471] Q. (by Dr. Vieira continuing) So to that extent, then, is it not true, sir, that under PELRA MCCFA has become joint maker of policy with Board in terms of terms and conditions of employment?

Mr. Miller: Again, objection to the extent it calls for a legal interpretation of PELRA by this witness.

Dr. Vieira: I am speaking practically, sir. I mean practically speaking.

Mr. Lindquist: Practically speaking, answer it, if you can.

A. Well, practically speaking, both sides have to agree to the contract, so to the extent that the contract covers terms

and conditions, they have to be mutually agreed upon. Therefore, we are equal partners in that process.

Q. And the statute does require, does it not, sir, that the State must negotiate with MCCFA?

A. The statute requires that the State must negotiate with the exclusive representative.

Q. That's what I mean—

A. In this case it's—

Q. Which happens to be MCCFA?

A. Yes.

Q. Is it not correct that MCCFA's role in the meet and negotiate process under PELRA is that of an advocate for [R. 472] its members' position or its members' goals?

A. Its position is to be an advocate for all of the people we represent, and that includes people who are not members.

Q. For the bargaining unit, then?

A. The bargaining unit.

Q. Well, to what extent do nonmembers of MCCFA and the bargaining unit have an opportunity to influence the development of MCCFA bargaining policy?

A. We have two to three—it varies from year to year, and in some cases I think perhaps more than that—surveys that are sent to all members of the bargaining unit, and those are used by the Negotiations Committee in determining contract proposals and establishing priorities.

Q. After those priorities and proposals have been determined and MCCFA representatives enter into negotiations with the agents of the Board, the negotiators of the Board, would it not be correct to characterize those negotiations in the vernacular as—quote/unquote—arms lengths negotiations?

A. I don't know what that means.

Q. That means that you come in taking the position of trying to get the best result from the negotiating process that you can on behalf of the people that you represent and not being concerned—necessarily concerned, at least, with the position of the other side.

[R. 473] A. Our primary concern is to represent our people, yes.

Q. Sir, I think you were here when Chancellor Helland testified as to his belief that one of the purposes of the meet and negotiate/meet and confer provisions of PELRA was to give—or is to give the exclusive representative some influence over the course of terms and conditions of employment in the community colleges. Do you recall hearing that testimony?

A. I don't remember in those specific words, but I think that kind of attitude.

Q. Do you concur in that view that as a matter of at least practice during the years you have been president you have tried to use meet and negotiate and meet and confer processes of PELRA to exert some influence on the development of terms and conditions of employment in the community colleges favorable to the interests of the faculty members you represent?

A. Certainly.

Q. In fact, that's been your goal as an exclusive representative, has it not?

A. That's correct.

Q. In fact, you try to exert as much influence as you can within the structure that's given to you, is that correct?

A. We try to exert effective—

Q. That's right, you try to be as effective as possible, is [R. 474] that correct?

A. Yes.

Q. Without exclusive representation, that is without the structure that requires the agents of Board to negotiate and confer with MCCFA uniquely, could MCCFA possibly be as effective in representing the interests of its members or all faculty members in the community colleges as it has been?

Mr. Miller: Objection, calls for the speculation of the witness.

Mr. Lindquist: Well, the objection is overruled.

Dr. Vieira: I am asking for a practical judgment on the part of a man who has been involved in this negotiations process, and then earlier had seen it—had seen the system without exclusive representation.

Mr. Lindquist: I think the witness is qualified to speak on this.

Q. Do you feel that exclusive representation makes you more effective or less effective?

A. Oh, certainly more.

Q. In your experience do you believe that the results in terms of the terms and conditions of employment that community college faculty members have attained over the years have been better or worse under exclusive representation as opposed to the nonexclusive representation process?

[R. 475] A. I think the benefits gained under exclusive representation have been greater than they would have been without exclusive representation.

Q. So you believe, then, that MCCFA as the exclusive representative has been effective to some degree in achieving its goals?

A. Yes.

Q. Viewed from the perspective of the goals of MCCFA, do you believe that its beneficial to you to require having all

the faculty members in the bargaining unit accept MCCFA as their representative?

Mr. Miller: Objection. No foundation. Have we established what the goals of the MCCFA are?

Dr. Vieira: Whatever they are.

Mr. Miller: Whatever they are?

Dr. Vieira: Whatever they are.

Mr. Miller: Answer it, if you can.

A. What was the question again?

Q. Do you believe that it is beneficial to MCCFA in terms of attaining any of its goals to have all of the faculty members of the community colleges required to accept MCCFA as their exclusive representative?

A. I am puzzled by what you mean by "required to accept".

Q. Well, as a matter—

A. You mean by the statute?

[R. 476] Q. By the statute, by PELRA, required to have MCCFA—they may not accept it in some ideological sense—but required to have it as their exclusive representative.

A. I think it's beneficial to the faculty to have exclusive representation.

Q. Well, the question I ask, though, is do you think it's beneficial to MCCFA in terms of achieving its goals.

A. Yes, which are the faculty goals.

Q. Oh, but in terms of achieving its goals, then you go on to say that they are the faculty goals?

A. (Witness nods head.)

Q. Is it possible, sir, that there are some members of the faculty, whether they are members or nonmembers of MC CFA, who do not concur in the view that the goals of MCCFA are the goals of the faculty as a whole?

A. On any issue at any moment we have people who don't agree, whether they are members or not members. This is a group of highly educated, intelligent, and extremely independent people, and to think that there is unanimity on every issue would be—it's dreaming. Certainly, there are people who disagree. I often disagree with a decision that's made if I get outvoted.

Q. All right. Sir, do you know of any group, organization, association, whatever, other than MCCFA that can require community college administration to negotiate or confer [R. 477] with it with respect to terms and conditions of employment and college policies?

A. There are other organizations that negotiate with the Community College Board or Department of Personnel.

Q. Which other?

A. Well, there is the Teamsters—

Q. No, sir—

A. —AFL/CIO—

Q. They don't negotiate with respect to community colleges' terms and conditions of employment for faculty, do they?

A. Not for faculty.

Q. That's what I'm talking about, with respect to terms and conditions of employment for faculty, MCCFA is the only group you know of that can require the administration to negotiate or confer?

A. That's correct.

Q. With respect to the negotiations and conferences that actually go on and have been going on while you have been president for the past five years, do you know of any group other than MCCFA that can demand to participate in those conferences?

A. Which conferences are you talking about?

Q. Negotiations and the meet and confer processes, that is MCCFA is one, the Board people are another, is there anybody else that can demand and require you or the Board [R. 478] to allow them to participate in the negotiations or the conferences under PELRA?

A. Not other than Department of Personnel or the executive branch of government.

Q. That is the superior legal authorities to the Board?

A. Right.

Q. Now, sir, with respect to the negotiations that have been held over the years, with which you are familiar at least, have these negotiations been held in private or public?

A. Well, they have always been open. There are sometimes observers and sometimes not. The only times that the negotiations have been closed when we are in mediation and the Mediator—State Mediator decided that they should be closed.

Q. What about the openness of the exchange of views and meet and confer sessions? What has been the practice there over the years?

A. The practice is that they are open to anyone who wants to observe. The practice has, also, been that it's not been a real high drawing power.

Q. Sir, do you know if the State of Minnesota has a public meetings or so-called sunshine law?

A. Yes, we do.

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[R. 650] Q. As President of the MCCFA have you ever informed any non-MCCFA member that they should not attempt to express their views and their opinions concerning their employment relationship with community college Administrators?

A. No.

Q. Are you aware of whether any other MCCFA officers have made such an attempt?

A. No. I'm not aware of that and it would be folly to do it because, first of all, we couldn't enforce it. And secondly, you'd probably get a strong reaction and get [R. 651] more trouble than it would be worth.

Q. Are you aware of either the MCCFA Board of Directors, the Executive Committee, or the Delegate Assembly has ever made any statement indicating that non-MCCFA members should not be expressing their views and opinions concerning their employment relationship to College Administrators?

A. Not as individuals. I think there have been motions suggesting or requiring, you know, which that nonmembers should not be involved in the formal exchange of views. They cannot represent the faculty. But, nothing that deals with them as individuals.

Q. By the formal exchange of views or Meet and Confer process, do you mean by that any such meeting as which the MCCFA is conducting pursuant to the Collective Bargaining Agreement?

A. Yes, that's what I meant.

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[R. 671] Q. Sir, isn't it correct to say that it's MCCFA's policy or practice—let's call it practice—that the community college Administration should recognize only MCCFA as the official spokesman for the community college faculty?

A. We're designated as the exclusive representative.

Q. Not only that, but it's your practice to tell the Administration that only your position can be accepted as the position of the faculty, isn't that right?

A. Well, I don't remember having occasion to tell an Administrator that directly. I think that the Administration understands that we are the exclusive representative.

Q. Understands it in what way? Don't you—I mean, is your view of the position of MCCFA is the position of the faculty period.

[R. 672] A. The official position, yes.

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[R. 673] Q. You were asked whether or not the MCCFA was the exclusive representative for representing the faculty. Mr. Durham, have you ever, or has any other MCCFA officer, told any community college Administrator that they were not to listen to a non-MCCFA member who wished to express an opinion concerning his or her employment relationship?

A. Not to my knowledge, no.

Mr. Miller: I have no further questions.

Ms. Sims: I have no questions.

REDIRECT EXAMINATION

By Dr. Vieira:

[R. 674] Q. I just have one other question for you, Mr. Durham. With respect to whether you've ever told administration people that they shouldn't listen to nonmembers of MCCFA, isn't it true that MCCFA's position is that the Administration is precluded from dealing verbally, in writing or any other way with an individual, a nonmember of MCCFA with respect to the terms and conditions of employment in the community college system?

A. I believe that Management is prohibited from a formal negotiation or a formal Meet and Confer or Exchange of Views to terms and conditions. I do not believe that Management is prohibited from listening to concerns of an individual faculty member.

Q. Well, Mr. Durham, I just have a problem understanding what the distinction you are making is. Can a nonmember of MCCFA, as you view the situation, go to an appropriate com-

munity college Administrator and say "I would like to talk to you personally about changing some of the terms and conditions of the employment that apply to me. I would like to sit down with you right now in the coffee shop or in your office and I would like to discuss that matter and come to an arrangement with you." Isn't it true that the MCCFA takes the position that the Administrator cannot do that?

A. Well, it hinges on I guess what you're talking about when [R. 675] you're saying "arrangement." It certainly is not our position that an individual faculty member cannot sit down and talk to an Administrator. This happens all the time. A nonmember. But, they can't negotiate a new condition for terms of employment. That's outside of the contract, or in violation of the contract.

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TRIAL TESTIMONY OF
RALPH F. CHESEBROUGH
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[R. 769] Q. Mr. Chesebrough, MCCFA takes the position, does it not, that the community college administration may not refuse to negotiate terms of the conditions of the employment with MCCFA?

A. State that again.

Q. MCCFA takes the position, does it not, that the community college administration may not refuse to negotiate terms and conditions of employment with MCCFA?

A. I think that as the exclusive representative of the faculty, the employer is required to negotiate terms and conditions of employment with MCCFA.

Q. Well, it's MCCFA's position, is it not, that that requirement should be enforced and a binding law?

A. In this context, what do you mean by "MCCFA"? Do you mean the delegate assembly, the Board? Do you mean have they taken a specific action?

Q. Well, let's start with you as the chief negotiator for MCCFA. Is that the practical position you take when dealing with spokesmen for the community college administration, that they are required to negotiate with MCCFA on terms and conditions of employment?

A. I understand that as a part of the law.

Q. At least one result of the law in the practical sense, Mr. Chesebrough, has been that MCCFA now has more influence or more opportunity I should say to influence terms and [R. 770] conditions of employment in community colleges than it had before the Meet and Negotiate process came into being?

A. I certainly hope so.

Q. In fact, sir, MCCFA views the meet and negotiate process under PELRA as one means which it can attempt to exert influence on the direction of community college policy. Is that not so?

A. I don't think that the MCCFA has ever taken the position that the meet and negotiate was a way of influencing college policy.

Q. Well, a way of influencing the determination of terms and conditions of employment in the colleges?

A. I think that as a practice the association has negotiated terms and conditions of employment under the Statute.

Q. As a practice or as a practical matter, do you see that negotiation as a means of influencing the outcome in terms of what terms and conditions of employment are ultimately determined to be?

Mr. Miller: Objection. I believe the question has been asked and answered at least twice now.

Mr. Lindquist: I thought it had been answered. Objection sustained.

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[R. 774] Q. Sir, you have been involved in the meet and negotiate process I believe you said since 1972, is that right?

A. I believe 1972 was the year. I'm not absolutely certain.

Q. During the course of your involvement with meet and negotiate at community colleges, have you ever become aware of any group other than MCCFA that can require community college administrator to negotiate with it with respect to any matters of community college policy?

A. I don't think that there is any group that can negotiate relative to any matter of community college policy.

Q. Sir, are terms and conditions of employment a matter of community college policy? You're using policy in an interesting way here. What are terms and conditions of employment in the community colleges?

A. I guess my understanding of the Statute is somewhat different than yours. It's my understanding that there are aspects of policy that we simply cannot negotiate.

Q. With respect to the subjects that you can negotiate, are you familiar with what those are?

A. I think so.

Q. You had eight years to study them, haven't you?

A. Yes.

[R. 775] Q. Do you know of any group other than MCCFA that can require community college officials to negotiate on those subject matters?

A. I believe that the American Association of the State, County and Municipal Employees rep[illegible]sents some groups of

community college employees, and I believe the Teamsters represent some groups of community college employees.

Q. I'm talking about the terms and conditions of employment for community college faculty members.

A. I don't believe you said faculty members in your question.

Q. Well, I'll restate it that way. Faculty members, in terms and conditions of employment in which MCCFA has been involved in negotiating in the last eight or so years, is there any other group that you know of that can require the community college administration to negotiate on those matters?

A. The Minnesota Community College Faculty Association is the exclusive representative of faculty members in the bargaining unit. By definition of exclusive representative, I believe that we are the only ones who can meet and negotiate on their behalf. There are some other faculty members who are not on the bargaining unit.

Q. As a practical matter, you know of no other group, do you, sir, in the last eight years or since MCCFA has become an exclusive representative that has ever negotiated with the [R. 776] college administration over terms and conditions of employment for faculty members?

A. You characterize it as a practical matter. I don't know about whether it's a practical or impractical. I know of no other group.

Q. Do you know of any group that can demand to participate in the negotiations that go on between MCCFA on the one hand and the community college administrators on the other?

A. Well, if I understand the Statute, any group that can show a sufficient showing of interest from faculty members can petition the Bureau for jurisdictional election and become involved in that process.

Q. Do you know of any group that has done that?

A. Not to my knowledge.

Q. When a jurisdictional election is held, what is the result of that election?

A. An exclusive representative may be elected or the bargaining process may be rejected by the members of the bargaining unit. They may choose no representative.

Q. So what you're telling me in essence is—

Mr. Lindquist: What's the reason to educate the Court about labor relations? I just don't understand the purpose of your inquiry. I don't think that these are issues in this case. Do you?

[R. 777] Dr. Vieira: Well, I thought exclusive representation was one of the issues in the case.

Mr. Lindquist: The Court knows all about exclusive representation. You don't have to educate us on that. I'll call your attention to the fact that we were going to be one hour with this witness this morning. We have gone about two hours now. We have got two witnesses standing by I guess. Do you want to have evening sessions or early morning sessions, okay; but we are going to move on with this case.

Dr. Vieira: I'm sorry, Your Honor. This witness is being evasive.

Mr. Lindquist: I agree too. I think the witness could be more forthright too.

By Dr. Vieira:

Q. I have just a few more questions, Mr. Chesebrough. You believe, do you not, that the process of meet and negotiate in which MCCFA engages changes the outcome of the determination of terms and conditions of employment, that is they are different as a result of the process of meet and negotiate than they would have been without that process?

A. That's the assumption under which we operate, yes.

Q. In fact, it's true, is it not, that the assumption under which you operate is that you try to maximize the degree [R. 778] of change favorable to the positions that you want to achieve?

A. We try to negotiate a contract that is the most desirable contract for the people we represent that we can negotiate.

Dr. Vieira: I have no more questions of this witness.

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[R. 781] Q. Mr. Chesebrough, apart from the times that you have estimated in conjunction with IMPACE related activities, would you give us a general description of what you do spend your time on?

A. Well, I would spend a great deal of the time in the grievance process, and conferring with members relative to the problems and concerns, or interpretation of the contract, or relative to concerns they have about their employment relationship that they may feel is unfair, or unjust. We confer about whether or not there is a grievance. I spend a great deal of time with grievance representatives. I spend a great deal of time in the negotiation process and research in preparation for that and at the table. I worked in a much much less a degree with the various committees of the association, arranging those. I arrange for the meeting places and the physical arrangements and packets for the Board members for the Board meeting and for the Delegate Assembly meetings and for the Executive Committee meetings. I meet on all occasions with the Meet and Confer Committee as well as with the Negotiation Committee.

Q. As a part of your activities and duties have you ever informed a non MCCFA member that they cannot [R. 782] express any views or opinions they may hold concerning their employment relationship with college administrators?

A. No, I have not told a non member that they could not express their own views.

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[R. 784] Q. Are you aware that there was a faculty senate at Normandale Community College prior to the implementation of the collective bargaining agreement?

Mr. Miller: I am going to object to this line of questioning as being beyond the scope of cross. Mr. Vieira had the opportunity to visit about those subjects as part of his initial examination.

Mr. Lindquist: I understand you have just a few more questions.

Dr. Vieira: Yes. Mr. Miller asked Mr. Chesebrough whether he could be—.

Mr. Lindquist: Proceed. Objection overruled.

By Dr. Vieira:

Q. Are you aware that there was a faculty senate prior to the implementation of the collective bargaining agreement at Normandale Community College?

A. Specifically at Normandale I don't know if there was a faculty senate or not.

Q. Do you know if there was a faculty senate at any of the community colleges?

A. There was faculty senates or faculty council. If the term was used it was not uniform on some of the campuses.

[R. 785] Q. As a practical matter were those not in fact replaced by the meet and confer or exchange of views committees under the MCCFA under the collective bargaining agreement?

A. Under the collective bargaining agreement the meet and confer process was established as a means of exchanging views on the campuses for faculty input.

Q. But didn't that replace the faculty senate?

A. Sir, I don't know that the word "replace" is the accurate word. As far as I know there were no longer those other organizational structures.

Q. You understand that there was some cause and effect between the two things happening; that is, meet and confer process being implemented in the disappearance of the faculty senates?

A. I think there is a relationship there, yes.

Q. In fact the relationship is one of direct cause and effect, is it not, sir?

A. Sir, again the contract provided that there would be a meet and confer process in accordance with the contract established on those campuses. That left, it seems to me no reasonable position for there to be another organized structure there.

Dr. Vieira: No further questions.

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TRIAL TESTIMONY OF
DONALD WAYNE HOLMAN
pp. 839-840

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[R. 839] Q. Can you recall what the structure was at Willmar pre-1973 as the faculty governance? How did the faculty go about making decisions among itself dealing with the policies and the questions that it wanted to raise to the administration?

A. Well, I don't know what dates you're picking. I can pick —when did I come? 1965?

Q. Okay.

A. We had a series of curriculum committees, this committee, that committee, personnel committee. We made recommendations to the administration, and the administration did what they felt like.

Q. Who could join those particular committees?

A. On our campus, I guess everyone is eligible, everyone who is a member of the association.

Q. So there was no lack of eligibility for membership on those committees because a person was or was not a member of any particular group? I mean you had to be a member of the faculty but other than that—

A. Not that I know of.

Q. Now does that system of—by the way, did you participate in any of those committees?

A. Yes.

[R. 840] Q. Functionally speaking, how did those committees deal with the administration? What was the mechanism they used to bring their concerns to the attention of the administration?

A. Sort of a show and tell operation. They would meet and write a report.

Q. Who would meet?

A. The members of the committee.

Q. They read the report and would take the record—

A. To the faculty.

Q. To the faculty as a body?

A. As a body.

Q. What would they do?

A. Vote it up or down.

Q. After it would be voted up or down, what would be done?

A. It would be implemented or an interpretation would be made on how it would be implemented by the chief administrator.

Q. Now do those committees still exist to your knowledge?

A. Yes, in a different form I guess. They still have curriculum. We still have personnel.

Q. What is the difference in the form?

A. At that time the administrator was serving on the committee and now we don't.

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TRIAL TESTIMONY OF
RONALD A. LIEVENSE
pp. 1024-1030

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[R. 1024] Q. One of your concerns in the fact of working inordinately hard is with you because you don't like the fact you came from 24 release hours down to 20 release hours and that causes you to work harder?

A. In physical education you're basically talking four courses which amounts better than eight hours per week.

Q. In what, better than eight hours in what?

A. It becomes eight hours of contact with the students over a period of a year, which gets to be a lot more time.

Q. Have you ever talked to President Lorenz about any of your concerns?

A. Oh, yes.

[R. 1025] Q. And what have you told him?

A. Pardon?

Q. And what have you told him?

A. The very thing I'm telling you.

Q. Is it fair to state that the complaints you reiterated in this courtroom here today are complaints you have made known to Mr. Lorenz on more than one occasion?

A. Offhand, I don't know if it was once or twice, some place in there.

Q. But you have made them aware to Mr. Lorenz outside of this courtroom?

A. Yes.

Q. And he's never told you you couldn't talk to him?

A. No, he's never done that.

Mr. Goodwin: I have no further questions.

CROSS-EXAMINATION

By Mr. Mueting:

Q. Mr. Lievense, you indicated you attended an Exchange of Views meeting at one time, is that correct?

A. Yes.

Q. What was the name of that committee that was holding that meeting?

A. I think it was the Curriculum Committee.

Q. And when was that?

A. I would say it would have to be four years ago.

[R. 1026] Q. So what would that make it, 1976?

A. Could be, it was just prior to all the plans being finalized for the addition to our activity building.

Q. And was that a formal Exchange of Views meeting?

A. It was a formal one, yes, to my understanding.

Q. Was there representatives from both the administration and the faculty there?

A. Yes.

Q. And what was told to you by an administrator regarding your right to speak?

A. That I couldn't respond.

Q. Was there a question presented to you for a response by someone?

A. One of my colleagues.

Q. And who was the administrator who told you you couldn't respond?

A. He probably forgot about this one, President Lorenz.

Q. He told you you couldn't respond to the question. What was the question that was put to you?

A. To do with additional space.

Q. Is that all you remember about it?

A. Yes, something about, you know, how much space was needed. There was some discussion on how much, how many square feet we should have in addition to the building, and so forth, and type of courses that were going to be offered. [R. 1027] So one of my colleagues asked me how much space is needed for this and I responded.

Q. Who was the person asking you the question?

A. I can't tell you, all I know is somebody in that committee because it was a pretty full room.

Q. And you were trying to respond to a faculty member's question?

A. Yes.

Q. Wasn't a question from any of the administrators, was it?

A. No, it was not.

Q. You also indicated once that you wished to talk to an administrator about, I believe it dealt with credits for one of your colleagues. You thought there was some unfairness involved in that. What was the situation there?

A. The activity release was for, for women's athletic directors versus activity release for men's.

Q. Who do you think was being unfairly treated?

A. I felt I was.

Q. So you were going to the administrator on your own behalf?

A. Yes.

Q. And you wanted that taken care of by the administrator?

A. I was hoping somebody would at least listen to me.

[R. 1028] Q. Would you classify this in general terms as a grievance?

A. Well, my main concern was it had to do with budgets and the last page of the budget, some question was directed, what are some things that you feel would help a better function of the institution, so I made some statements on that in the preparation of the budget.

Q. You're talking about your case in particular, aren't you?

A. Right.

Q. And you were dissatisfied with that, weren't you?

A. That's right.

Q. Who did you go to talk about it with an administrator?

A. Dean of Students.

Q. Who was that?

A. Dr. John Hillborn (phonetic).

Q. What year was that, do you recall?

A. It's been the last two, it was in the spring of '77.

Q. Did you—

A. Possibly '79, excuse me.

Q. And did you express—

A. No, spring of possibly '80, I'm sorry.

Q. Oh, so it was this year?

A. Yes.

Q. And did you express to him your concern?

A. Yes.

Q. When you were the chairman of your department you had quite [R. 1029] a bit of authority, didn't you?

A. Oh.

Q. You had more authority than you do now?

A. Very much so because I'm coordinator now.

Q. And you were able to evaluate your fellow faculty members at that time, weren't you?

A. I was one of many.

Q. You had that authority, didn't you?

A. Well, I don't know, we all got together and just formed a committee.

Q. Did you have the authority as a member of that committee or not?

A. Sure I had the authority.

Q. And you don't have that now?

A. No.

Q. And you resent that?

A. Yes, because I feel it's very important we evaluate each other.

Q. Have you ever told the administration you would like to give to any member of the administration your views on a colleague?

A. Explain yourself, I guess I don't get the question.

Q. With regard to the job that a fellow faculty member is doing and your evaluation of that person, have you ever

gone to the administration to talk about your feeling on [R. 1030] faculty members and the job they are doing?

A. I think that's, you know, if you are athletic director you discuss things like this.

Q. And have you ever been told that they won't discuss it with you?

A. I don't believe I have ever been told, it's just that there is no response.

Q. But you have been able to express yourself, haven't you?

A. I guess I have been given the opportunity.

Q. Have you ever attended any other Exchange of Views meetings other than the one you have just told us about earlier?

A. Come to think about it I think I did, but I just sat in.

Q. Have you ever requested to be recognized as a special witness?

A. Have I ever requested?

Q. Yes.

A. No.

Q. You are aware of that, aren't you, that there is a provision for special witness?

A. I heard it in previous testimony.

Q. That was the first you ever heard of it?

A. Yes.

Q. Do you ever read the policy manual at the college?

A. Yes.

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

4-74 Civ. 659

LEON W. KNIGHT, et al.,

Plaintiffs,

vs.

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, et al.,

Defendants.

ORDER

Before HEANEY, Circuit Judge, ALSOP, District Judge, and LARSON, Senior District Judge.

This matter comes before this Court on the plaintiffs' motion for relief. They assert that the defendants have violated this Court's order of March 31, 1982, in three important respects. First, the defendants prevented the plaintiffs from participating in the decision regarding which meet and confer committees to establish. Second, the defendants created election procedures that effectively enabled only members of the Minnesota Community College Faculty Association (MCCFA) to be selected for those committees. Third, defendant MCCFA discriminated against the plaintiffs by announcing that it would reimburse expenses incurred by faculty representatives on meet and confer committees only if they were MCCFA members and supported its positions at meet and confer meetings.

We find no merit to the plaintiffs' first and third contentions. With respect to the first contention, the plaintiffs were permitted to recommend a committee structure to the chancellor of the community college system. The same right was extended to the MCCFA. Thereafter, the chancellor made a unilateral decision regarding the meet and confer committee structure. This procedure comports fully with our 1982 decision. With respect to the plaintiffs' third contention, the MCCFA has a right to pay the expenses of its members who are elected to meet and confer committees and to decline to pay those expenses for nonmembers.

There is merit, however, to the plaintiffs' second contention; that is, that they have been denied the opportunity to select and serve as meet and confer representatives by the election procedure which has been adopted. Under the meet and confer system established after our 1982 decision, each meet and confer committee had six faculty members. Committee members were selected through the following election procedure: The MCCFA convened a general meeting of the faculty. Any faculty member present could nominate a faculty member, including himself or herself, to serve on a meet and confer committee. The MCCFA endorsed six candidates for each committee. All faculty persons were required to vote for six persons for each committee. If they failed to do so, their votes were voided. As a result of this election procedure, no non-MCCFA member was elected to be a meet and confer representative for this school year. As long as MCCFA members continue to constitute a majority of the faculty persons voting and they vote for the union endorsed slate, no non-MCCFA member can ever be elected.

In our view, this election procedure contravenes our 1982 decision. In the memorandum opinion accompanying our order

for judgment, we emphasized the vital importance of the First Amendment rights to freedom of expression and association in the higher education context and declared unconstitutional the practice of having the MCCFA select all meet and confer representatives because it "deprive[d] [nonunion faculty members] a fair opportunity to participate in the meet and confer process." To date, the challenged election procedure has operated to totally exclude non-MCCFA faculty from membership on meet and confer committees; it will likely operate to do so in the foreseeable future. Thus, it denies nonunion faculty members the opportunity to participate meaningfully in the meet and confer process in contravention of our original judgment and order.[1]

Nonetheless, we do not believe that it is necessary to void the elections for the current school year. By the time that new elections could be conducted, the school year would be over. In order to ensure that our 1982 decision is effectuated, however, we do require that new elections be held at the beginning of the 1983-84 school year. In these elections, the procedures used in the contested election may be used with one exception—a provision permitting cumulative voting must replace the present requirement that each voter must cast a vote for

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[1] To support the challenged selection procedure, the MCCFA relies upon several cases declaring constitutional a requirement that voters in elections for public officials must vote for as many candidates as there are positions to be filled. *E.g.*, *Amedee v. Fowler*, 275 F. Supp. 659 (E.D. La. 1967); *Boineau v. Thorton*, 235 F. Supp. 175 (E.D. S.C. 1964), *aff'd*, 379 U.S. 15 (1964). These cases are plainly distinguishable from the instant one. Unlike this case, they did not arise in the context of higher education in which First Amendment freedoms are especially important and are entitled to protection absent compelling, legitimate state interests which cannot be furthered by less intrusive means. In this case, there are means through which the defendants can accomplish the legitimate goals underlying the meet and confer process, while not intruding on the First Amendment rights of non-MCCFA faculty members by effectively denying them a fair opportunity to select and serve as meet and confer representatives. *See* slip op., *infra* at 3-4.

one of the candidates for each committee position. Under such a cumulative voting system, each elector will have a number of votes equal to the number of committee members to be chosen and will be permitted to concentrate his or her votes on one candidate, or to distribute them as he or she sees fit. This system will not guarantee that non-MCCFA faculty members will be selected for committee membership. It, however, will ensure that nonunion faculty members will be able to elect at least one representative to each meet and confer committee if the committee size is retained at six, non-MCCFA faculty members constitute at least 17 percent of those present at the election, and they concentrate their votes behind a single candidate.

The parties shall develop the details of an election procedure which is consistent with this opinion and submit their proposal to the Court no later than June 1, 1983. The plaintiffs' motion that the MCCFA and State Board for Minnesota Community Colleges be held in contempt of this Court's 1982 decision is denied.

Judgment shall be entered in accordance with this order.

Dated this 5th day of April, 1983.

GERALD W. HEANEY
United States Circuit Judge

DONALD D. ALSOP
United States
District Judge

EARL R. LARSON
U.S. Senior District Judge